


Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
COMMITTEE REPORT
1350 Pennsylvania Avenue, N.W., Washington, DC 20004

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen 
Chairperson, Committee on the Judiciary and Public Safety

Date: November 22, 2022

Subject: Report on B24-0952, the “Opioid Litigation Proceeds Amendment Act of 2022”

The Committee on the Judiciary and Public Safety, to which Bill 24-0952, the “Opioid Litigation Proceeds Amendment Act of 2022”, was referred, reports favorably thereon, and recommends approval by the Council of the District of Columbia.

CONTENTS

Statement of Purpose and Effect _____	Page 2
Legislative History _____	Page 10
Position of the Executive _____	Page 11
Advisory Neighborhood Commission Comments _____	Page 11
Witness List and Hearing Record _____	Page 11
Impact on Existing Law _____	Page 13
Fiscal Impact _____	Page 13
Racial Equity Impact _____	Page 13
Section-by-Section Analysis _____	Page 13
Committee Action _____	Page 14
List of Attachments _____	Page 15

STATEMENT OF PURPOSE AND EFFECT

I. Purpose and Effect

Bill 24-0952, the “Opioid Litigation Proceeds Amendment Act of 2022”, was introduced by Chairman Phil Mendelson, at the request of Attorney General Karl Racine, on July 14, 2022. The bill was referred to the Committee on the Judiciary and Public Safety, with comments from the Committee on Health, on September 20, 2022, and the Committee held a public hearing on the bill on September 16, 2022.

B24-0952 governs the management and use of the approximately \$50 to \$80 million the District is currently set to receive from major national opioid litigation settlements over the next eighteen years.¹ These settlements, against the country’s largest opioid manufacturers and distributors, collectively represent the second largest civil litigation settlements in United States history.² Some monies have already reached the District, but until this legislation is passed, they cannot be expended for any purpose, including opioid abatement.³ The Committee is therefore moving B24-0952 to create a structure to receive, manage, expend, and oversee the settlement proceeds, based on model legislation developed by public health and legal experts and adopted by a number of other jurisdictions. Most states have enacted similar legislation to create legislatively appointed bodies to oversee the funds, although they differ in their composition and duties.⁴

B24-0952 creates an Office of Opioid Abatement (“Office”) within the Department of Behavioral Health, which will support an Opioid Abatement Advisory Commission (“Commission”). Jointly, the two entities will govern the use of the proceeds, which will be deposited in a special purpose revenue fund, the Opioid Abatement Fund (“Fund”). Both the settlements and the Committee Print strictly regulate the monies in the Fund to prevent their use for other purposes, and the Print builds in regular, extensive reporting on Fund activities, in addition to audits. The Print’s provisions are guided by five principles: (1) that the bulk of the proceeds should be used to support opioid abatement activities; (2) that those efforts should be guided by evidence-based and evidence-informed strategies to combat opioid misuse and abuse; (3) that the District’s response must redress existing disparities in residents’ access to prevention, treatment, recovery, and harm-reduction programs; (4) that those most impacted should be part of the process; and (5) rigorous program evaluation is essential.

¹ *Master Settlement Agreement*, Truth Initiative, <https://truthinitiative.org/sites/default/files/media/files/2019/04/master-settlement-agreement.pdf>; Office of the Attorney General, *PL Tobacco Settlement and Tobacco Directory*, <https://oag.dc.gov/pl-tobacco-settlement-and-tobacco-directory>.

² In the 1990s, 46 states settled claims against the country’s four largest tobacco manufacturers in the largest settlement in U.S. history, which resulted in states receiving billions of dollars in payments over more than twenty years.

³ As of October 3, 2022, the District had already received approximately \$2.7 million, deposited in the Office of the Attorney General’s Litigation Support Fund, and another \$2 million, deposited in the Opioid Abatement Fund. D.C. Official Code § 1-325.441(c) provides that “Money deposited into the Fund shall not be obligated or expended until the Council of the District of Columbia passes legislation setting forth the permissible uses of the money in the Fund.”

⁴ For more information on states’ approaches to the opioid litigation settlements, *see* National Academy for State Health Policy, *How States Are Administering Opioid Settlement Funds* (Nov. 17, 2022), <https://www.nashp.org/how-states-administering-opioid-settlement-funds/>.

II. Committee Reasoning

a. Background

Opioid Crisis in the District

Opioid overdose deaths have reached epidemic proportions in the District and show no signs of slowing down. According to the Office of the Chief Medical Examiner (“OCME”), in 2020, there were 411 opioid overdose deaths in the District, with an average of 34 per month – a nearly 400 percent increase over 2014 (*see Figure 1*).⁵ Seventy-two percent of those deaths were of males, and 62 percent were of persons 50 years of age and older.⁶ Black people were disproportionately impacted, at more than 85 percent of the decedents, and most deaths occurred in Wards 5, 6, 7, and 8.⁷ Notably, 63 prescription opioids contributed to the overdoses, including codeine, oxycodone, hydrocodone, buprenorphine, and methadone.⁸ Most cases reviewed by OCME’s Opioid Fatality Review Board from 2020 showed similarities, including past system involvement, a history of a mental health disorder, substance abuse with a previous overdose, and a history of Adverse Childhood Experiences.⁹ More than half of the decedents had been previously discharged from emergency medical services after receiving treatment for an overdose, many of the decedents started consuming controlled substances at young ages, and 38 percent had previously been incarcerated at the Department of Corrections.¹⁰

⁵ Opioid Fatality Review Board, *2020 Annual Report*, 3, <https://ocme.dc.gov/sites/default/files/dc/sites/ocme/publication/attachments/OFRB%202020%20Annual%20Report-FINAL%20WEB.pdf>.

⁶ *Id.*

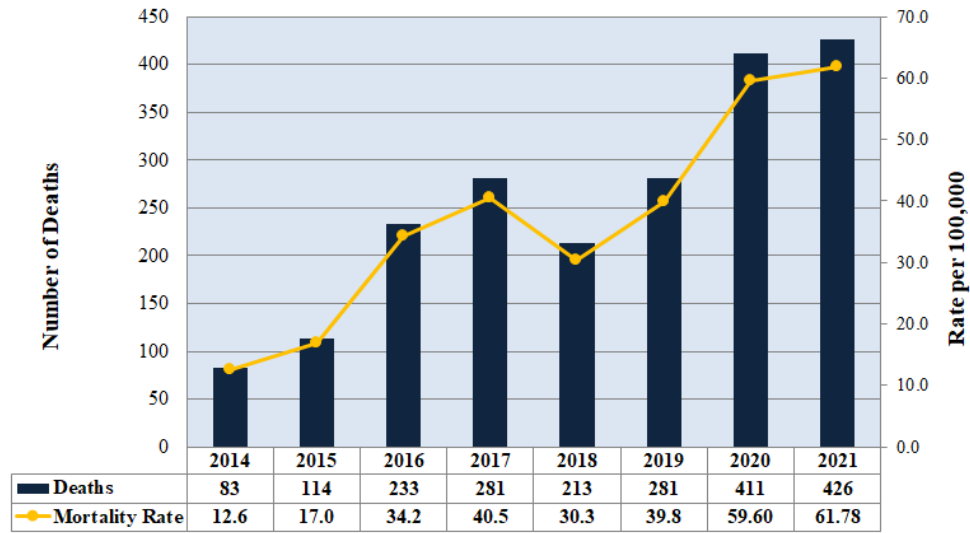
⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Figure 1: Number and Rate of OCME Cases by Year, 2014-2021



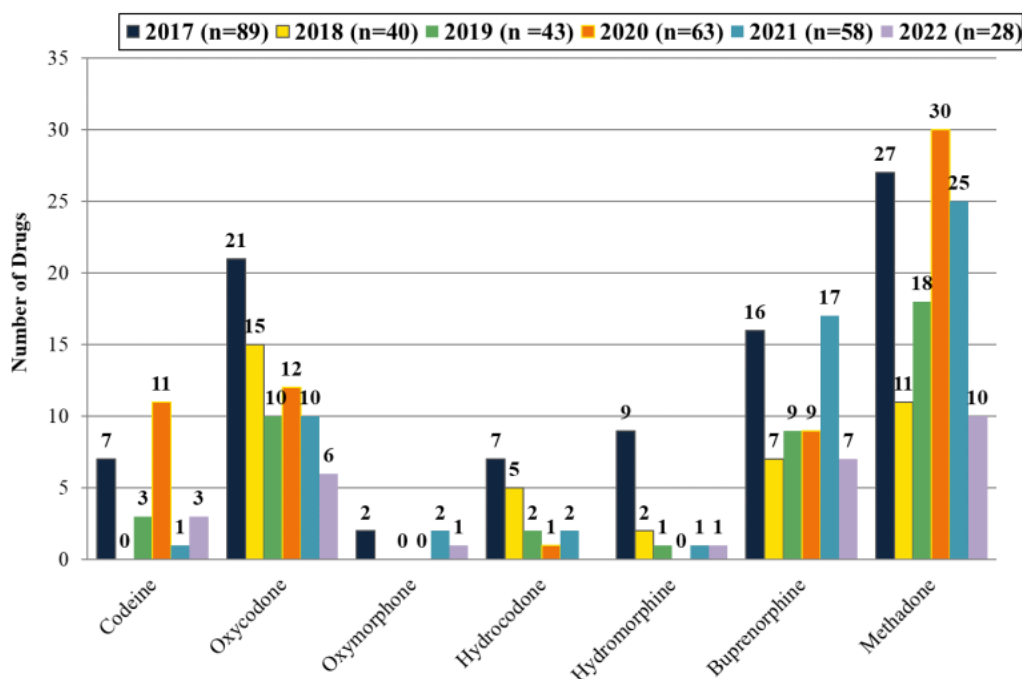
*Due to the pending population size for 2021, 2020 data was used to calculate mortality rate: <https://www.census.gov/quickfacts/fact/table/DC#>

Although 2022 fatalities have not yet been comprehensively reviewed by OCME, there have been a total of 272 recorded overdoses, as of November 14.¹¹ Including 2022 data, there have been 321 prescription opioids found in overdoses between January 1, 2017 and August 31, 2022 (see Figure 2).¹²

¹¹ Office of the Chief Medical Examiner, *Opioid-related Fatal Overdoses: January 1, 2017 to August 31, 2022* (Nov. 14, 2022), https://ocme.dc.gov/sites/default/files/dc/sites/ocme/agency_content/Opioid%20related%20Overdoses%20Deaths%2011.14.22%20FINAL.pdf.

¹² *Id.*

Figure 2: Number of Prescription Opioids Contributing to Drug Overdoses by Year, 2017-2022



Opioid Litigation and Settlements

The devastating impact of the opioid epidemic has given rise to thousands of lawsuits across the country, resulting in litigation with extensive legal claims. More than 3,000 cases by plaintiff state and local governments¹³ against dozens of "big pharma" opioid manufacturers and distributors have been merged into multidistrict litigation, with more than \$26 billion in settlement proceeds secured, to date.

Nationwide settlements have been reached to resolve all opioid claims brought under multidistrict litigation by states and localities against the country's three largest pharmaceutical distributors, which control approximately 85 percent of the U.S. market¹⁴ – AmerisourceBergen, Cardinal Health, and McKesson¹⁵ – and opioid manufacturer Johnson & Johnson ("J&J")¹⁶. Forty-six states and approximately 90 percent of eligible local governments signed onto the settlement,

¹³ *Opioids Investigations, Litigation, and Settlements*, National Association of Attorneys General, <https://www.naag.org/issues/opioids/>.

¹⁴ Ben Brewer, States, Cities Eye \$26 Billion Deal: Opioid Litigation Explained, Bloomberg Law (July 26, 2021), <https://news.bloomberglaw.com/health-law-and-business/states-cities-eye-26-billion-deal-opioid-litigation-explained>.

¹⁵ *Distributor Settlement Agreement*, <https://oag.dc.gov/sites/default/files/2022-02/Final-Distributor-Settlement-Agreement-2-.pdf>.

¹⁶ *Janssen Settlement Agreement*, <https://oag.dc.gov/sites/default/files/2022-02/Final-Janssen-Settlement-Term-Sheet-.pdf>.

finalized in February 2022 – the second-largest multistate agreement in U.S. history.¹⁷ The distributors will pay a maximum of \$21 billion over 18 years, and J&J will pay a maximum of \$5 billion over nine years.¹⁸ In total, \$23.9 billion will be available for opioid crisis remediation. The amount of funds provided to each state was determined by an agreement among the states based on the impact of the opioid crisis on that state’s residents, such as “the number of opioid deaths, the number of residents with substance use disorder, the quantity of opioids delivered[,] and the population of the state.”¹⁹ The District will receive more than \$47 million from the settlement agreement, with J&J paying \$9 million over ten years, and McKesson, AmerisourceBergen, and Cardinal paying \$38 million out over 18 years.²⁰

In addition to the financial payout, the settlement requires the three distributors to:

- Establish a centralized independent clearinghouse to provide the distributors and state regulators with aggregated data and analytics about where drugs are going and how often;
- Use data-driven systems to detect suspicious opioid orders from customer pharmacies;
- Terminate customer pharmacies’ ability to receive shipments, and report those companies to state regulators, when they show certain signs of diversion;
- Prohibit shipping of and report suspicious opioid orders;
- Prohibit sales staff from influencing decisions related to identifying suspicious opioid orders; and
- Require senior corporate officials to engage in regular oversight of anti-diversion efforts.²¹

Similarly, J&J will be required to:

- Stop selling opioids;
- Not fund or provide grants to third parties for promoting opioids;
- Not lobby on activities related to opioids; and
- Share clinical trial data under the Yale University Open Data Access Project.²²

Notably, the funds going directly to participating states and local governments require that at least 85% be used for current and future pre-approved opioid abatement efforts, which were developed in consultation with leading public health experts across the nation. The list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services so that state and local governments can decide what will best serve their communities.

¹⁷ Brian Mann, *4 U.S. companies will pay \$26 billion to settle claims they fueled the opioid crisis*, NPR (Feb. 25, 2022), <https://www.npr.org/2022/02/25/1082901958/opioid-settlement-johnson-26-billion>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Office of the Attorney General, *AG Racine Announces Opioid Distributors and Johnson & Johnson Will Pay Over \$47 Million to the District* (Feb. 22, 2022), <https://oag.dc.gov/release/ag-racine-announces-opioid-distributors-and>; Committee on the Judiciary and Public Safety, *Public Hearing on B24-0952, the “Opioid Litigation Proceeds Act of 2022”* 3 (written testimony of Karl Racine, Attorney General for the District of Columbia), https://lims.dccouncil.gov/downloads/LIMS/51068/Hearing_Record/B24-0952-Hearing_Record1.pdf.

²¹ *Id.*

²² *Id.*

The litigation described above is only one of several settlements. In 2019, Attorney General Racine, along with eight other states attorneys general, filed suit against OxyContin manufacturer Purdue Pharma ("Purdue"). The suit alleged that Purdue misled patients and doctors to increase opioid drug sales, with Purdue claiming that opioids were not addictive while pushing marketing materials to doctors in the District to prescribe more opioids for longer periods. Purdue generated approximately \$34 billion in total revenue between 1996 to 2019, most of which came from OxyContin sales and accounted for some 91% of its U.S. revenue. States began, starting in 2000, notifying Purdue of the addictive properties and widespread abuse of OxyContin, yet the company failed to curb its marketing efforts toward physicians. Over the next several years, a flurry of suits ensued from more than twenty states, including the District, culminating in a 2007 settlement for \$19.5 million and a federal settlement of \$160 million. However, according to the Office of the Attorney General, Purdue continued to drive sales for profits and ignore the rise in opioid deaths across the country.

As a result, litigation began again in 2017, and in 2019, 49 states' attorneys general, including Attorney General Racine, filed new or amended lawsuits against Purdue, all of which named specific members of the Sackler family or Sackler-related entities. Claims asserted by California, Connecticut, Delaware, Maryland, Oregon, Rhode Island, Vermont, and the District included fraudulent transfer, fraud and fraudulent misrepresentation, unjust enrichment, negligence, public nuisance, and violation of state consumer protection statutes by deceptive and unfair acts and practices. The District brought two of these claims for violations of consumer protection statutes and sought, among other relief, statutory civil penalties against each defendant.

Each of the eight states and the District filed their claims before Purdue filed for bankruptcy in 2019. In mid-2021, the U.S. Bankruptcy Court for the Southern District of New York approved Purdue's disclosure statement, effectively confirming the company's bankruptcy plan. However, shortly thereafter, the Department of Justice's U.S. Trustee objected to the confirmation of the plan, along with the eight states and the District who appealed the bankruptcy court's ruling. The U.S. District Court for the Southern District of New York then vacated Purdue's bankruptcy plan, allowing suits to proceed against the company and the Sackler family. Subsequent negotiations have resulted in a multi-billion-dollar agreement, and the District will potentially receive more than \$31 million once the settlement is finalized.

In February 2021, Attorney General Racine also announced the District's portion of a national \$573 million settlement with McKinsey & Company, a consulting firm that supported opioid manufacturers, including Purdue, with promoting and profiting off painkillers.²³ Under the terms of the settlement, the District will receive \$1.08 million over five years, and McKinsey & Company agreed to "make available to the public internal documents detailing its work for opioid manufacturers, complete investigations of internal attempts to destroy materials pertinent to the firm's engagements with opioid manufacturers, adopt a strict document retention plan and code of ethics, and cease any consulting efforts related to the development or sale of potentially dangerous drugs."²⁴

²³ Office of the Attorney General, *AG Racine Announces McKinsey & Company Will Pay \$573 Million for its Role in Turbocharging the Opioid Crisis* (Feb. 4, 2021), <https://oag.dc.gov/release/ag-racine-announces-mckinsey-company-will-pay-573>.

²⁴ *Id.*

\$1.7 billion nationally will also come from a settlement with Mallinckrodt, an opioids manufacturer. Mallinckrodt filed for bankruptcy in 2020, and the settlement was approved in court in early 2022. On November 2, 2022, CVS, Walgreens, and Walmart agreed to settle their own claims with state, local, and tribal governments, worth \$13.8 billion.²⁵ Finalization of that settlement is contingent on most of the plaintiffs signing onto the agreement.²⁶ The suits against the three allege they “turned a blind eye to the vast quantities of prescription opioids they were dispensing and the potential for diversion, ignoring warning flags”.²⁷

Model Settlement Proceeds Legislation

In late 2021, the O’Neill Institute for National and Global Health Law at Georgetown Law, the Center for U.S. Policy, the Legislative Analysis and Public Policy Association, and Brown & Weinraub jointly published the Model Opioid Litigation Proceeds Act (“Model Act”) to guide states in utilizing and overseeing settlement proceeds.²⁸ The Model Act “lays the groundwork for accountability and effectiveness of opioid litigation expenditures in two ways: first, by creating a separate, designated fund for opioid litigation-related proceeds and, second, by appointing a diverse oversight council representing individuals with varied backgrounds and expertise to oversee expenditures.”²⁹ The O’Neill Institute explained at the Committee’s hearing on B24-0952 that the model law was created to protect opioid settlement proceeds from “inappropriate diversion”, with the “tobacco settlements serv[ing] as a cautionary tale for plaintiff jurisdictions receiving opioid litigation proceeds.”³⁰ The Model Act is divided into ten sections, including legislative findings, the creation of an Opioid Litigation Proceeds Fund and Council, reporting requirements, and provisions for jurisdictions to issue rules and regulations. B24-0952, as introduced and in the Committee Print, is largely based on the Model Act.

b. Committee Print

The Committee Print creates a structure for identifying the District’s needs with regard to opioid use disorder and co-occurring substance use and mental health disorders, managing and overseeing the funds received under the settlements, monitoring awards and grants from the funds for performance and efficacy, and ensuring that programs and activities funded actually reduce the occurrence of these disorders in the District, particularly among disproportionately impacted communities.

²⁵ Jan Hoffman, *CVS and Walgreens Near \$10 Billion Deal to Settle Opioid Cases*, NY TIMES (Nov. 2, 2022), <https://www.nytimes.com/2022/11/02/health/cvs-walgreens-opioids-settlement.html>; Rachel Lerman and Meryl Kornfield, *CVS, Walgreens agree to settle opioid lawsuits for \$10 billion*, WASH. POST (Nov. 2, 2022), <https://www.washingtonpost.com/business/2022/11/02/cvs-opioid-settlement/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Legislative Analysis and Public Policy Association, et al., *Model Opioid Litigation Proceeds Act* (Sept. 2021), <http://legislativeanalysis.org/wp-content/uploads/2021/11/Model-Opioid-Litigation-Proceeds-Act-FINAL.pdf>.

²⁹ Committee on the Judiciary and Public Safety, *Public Hearing on B24-0952, the “Opioid Litigation Proceeds Act of 2022”* 1 (written testimony of Somer Brown and Shelly Weizman, O’Neill Institute for National and Global Health Law), https://lms.dccouncil.gov/downloads/LIMS/51068/Hearing_Record/B24-0952-Hearing_Record1.pdf.

³⁰ *Id.*

The Committee Print first establishes an Opioid Abatement Advisory Commission (“Commission”) to (1) “ensure that monies the District receives and deposits [from the settlements] are appropriately expended on evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders”, (2) “prioritize and facilitate public involvement, accountability, and transparency in allocating and accounting” for the funds, and (3) “ensure the monies the District receives have the effect of preventing, treating, and reducing” these disorders and fatalities.

The Commission would have 21 members, with eight government members from District agencies, the Office of the Attorney General, and the Council, five members appointed by the Mayor, four members appointed by the Council Chairman, and four representatives from the District’s leading health care and medical trade associations, including the D.C. Hospital Association and the D.C. Behavioral Health Association. As introduced, B24-0952 proposed a much smaller Commission of eleven members, namely without a number of the agencies implicated in opioid use disorder response and the trade associations. The Committee felt that, while the Commission should not be so large as to be unwieldy, it was important to ensure the perspectives and experience of practitioners and those who can contribute the latest in evidence-based and evidence-informed solutions are reflected. The Committee Print also allows the Commission to designate a Chair from among its members, instead of by the Mayor, as proposed. Mayoral representatives will be sufficiently present on the Commission, and it is important the Commission be viewed as a body separate from, but supportive of, the Executive’s efforts.

The Committee Print also establishes the Commission’s responsibilities, including making recommendations to the Mayor and Council on District-wide goals, objectives, and performance indicators relating to opioid use disorder and co-occurring substance use and mental health disorders, governing principles, policies, and procedures for applications for and awards of monies and grants, the awards themselves, performance and outcomes of awardees, and management of the monies. The duties are largely as proposed in the introduced version of the bill.

The Commission will be supported by an Office of Opioid Abatement (“Office”) within the Department of Behavioral Health, led by a Director with specific expertise in the subject matter. The Office will be responsible for first conducting a District-wide needs assessment, providing staffing, research, expertise, facilities, and technical assistance to the Commission, helping the Commission prepare its recommendations, integrating the Office’s work and that of the Commission with the existing District efforts to combat the opioid epidemic, managing grants and awards from the Fund, collecting data on grantee and awardee activities, preparing an annual report, and maintaining a public website reflecting Commission and Office operations and the status of the funds.

The Committee thoughtfully weighed the respective structures, roles, and responsibilities of the Commission and the Office. On the one hand, the Committee is respectful of the Executive’s role in executing government programs. On the other hand, the Committee recognizes that past may be prologue, both in the tobacco settlement proceeds context and specifically with the Department of Behavioral Health and its past and current efforts – and serious and documented

failures – to combat the opioid epidemic.³¹ However, a priority of this Committee, despite its limited jurisdiction in behavioral health matters,³² has been to push the Executive to integrate and streamline its planning and strategy, which it seems is coming together much more successfully in the LIVE. LONG. DC. strategy.³³ Creating an entirely disconnected new structure, outside of the chief agency with responsibility in this area, and with sole authority to administer tens of millions of dollars, would run counter to this goal. The Committee therefore chose an advisory Commission model but was intentional in providing for its members’ backgrounds and expertise and the Commission’s duties. In addition, although the Commission’s work will be advisory in nature, the Committee included a provision to guard against a toothless body that will require the Office to provide the Commission with written explanations when it decides to diverge from a Commission recommendation. The Committee also notes that a mandatory instead of advisory Commission model may work better at the state level, where it would be beneficial to have one body coordinating localities’ efforts and spending.

Regarding the funds themselves, the Committee Print largely hews to the introduced version of the bill. Monies from the settlements will be deposited into an Opioid Abatement Fund (“Fund”), a special purpose fund separate from the District’s General Fund. The Attorney General, as chief negotiator of the settlements, may elect to retain up to 15 percent of the settlements received before October 1, 2022, and 10 percent thereafter, guided by any limitations in the settlements, and for the purpose of opioid abatement. Monies in the Fund can only be used for specific purposes by statute and the settlements’ terms, such as Commission and Office activities and operations, District-wide needs assessments, awards and grants for evidence-based and evidence-informed prevention, recovery, treatment, or harm reduction activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders, evaluations of effectiveness and outcomes, data interfaces, and an audit required by the legislation. The Committee Print requires the Department of Behavioral Health to provide an extensive annual report to the Mayor, Council, and Attorney General on the District’s use of monies in the Fund, such as an accounting of all expenditures and an inventory of Fund investments, and an audit every five years by the District of Columbia Auditor.

LEGISLATIVE HISTORY

July 14, 2022 B24-0952 is introduced by Chairman Mendelson at the request of the Attorney General.

³¹ See Peter Jamison, *Pure incompetence*, WASH. POST (Dec. 19, 2018), https://www.washingtonpost.com/graphics/2018/local/dc-opioid-epidemic-response-african-americans/?itid=lk_interstitial_manual_21; Peter Jamison, *Many D.C. drug users not receiving consistent treatment after arrests, audit shows*, WASH. POST (Aug. 25, 2020), https://www.washingtonpost.com/local/many-dc-drug-users-not-receiving-consistent-treatment-after-arrests-audit-shows/2020/08/25/9854385a-e617-11ea-970a-64c73a1c2392_story.html.

³² Although the Committee does not have jurisdiction over behavioral health, it has focused on the activities and performance of the Office of the Chief Medical Examiner, which is an agency over which the Committee has oversight, and partnered with the Committee on Health to conduct oversight on the District government’s response to the opioid crisis. See Committee on the Judiciary and Public Safety, *Joint Public Oversight Roundtable on “The District Government’s Strategy and Actions to Combat the Opioid Epidemic”* (Jan. 28, 2019), <https://lims.dccouncil.gov/Legislation/HR23-0003>.

³³ See <https://livelong.dc.gov>.

July 29, 2022	Notice of Intent to Act on B24-0952 is published in the <i>District of Columbia Register</i> .
August 19, 2022	Notice of Public Hearing on B24-0952 is published in the <i>District of Columbia Register</i> .
September 16, 2022	Public Hearing on B24-0952 is held by the Committee on the Judiciary and Public Safety.
September 20, 2022	B24-0952 is referred to the Committee on the Judiciary and Public Safety, with comments from the Committee on Health.
November 22, 2022	Consideration and vote on B24-0952 by the Committee on the Judiciary and Public Safety.

POSITION OF THE EXECUTIVE

The Committee did not receive testimony or comments from the Executive.

ADVISORY NEIGHBORHOOD COMMISSION COMMENTS

The Committee did not receive testimony or comments from Advisory Neighborhood Commissions.

WITNESS LIST AND HEARING RECORD

On Friday, September 16, 2022, the Committee held a public hearing on B24-0952. A video recording of the hearing can be viewed at <https://entertainment.dc.gov/page/2022-council-district-columbia-hearings>. The following witnesses testified at the Committee's public hearing or submitted written testimony to the Committee:

Public Witnesses

Somer Brown – Law Fellow, O'Neill Institute for National & Global Health Law, Georgetown University Law Center

Ms. Brown testified in support of the bill and raised considerations for the Committee as it moves the bill forward. Namely, she suggested that states must implement comprehensive strategies ensuring oversight and accountability in order to safeguard litigation proceeds. She highlighted the Model Opioid Litigation Proceeds Act, a model law developed by the O'Neill Institute and others for states and territories that advances a strategy to maximize opioid litigation settlement proceeds. The model law proposes creating a separate fund for proceeds and appointing a diverse oversight council with expertise in public health, budgeting, personal experience, and substance use disorder treatment, prevention, recovery, and harm reduction service delivery to oversee expenditures from the fund. Lastly, Ms. Brown highlighted tobacco litigation settlements as a cautionary tale in which the proceeds have not been used for their intended purposes.

Kirstiaan Nevin – President, Medical Society of the District of Columbia

Dr. Nevin testified on behalf of the District's 12,000 physicians in support of the bill. She advocated for the creation of an Opioid Abatement Advisory Committee to manage the funds received by the District from national opioid settlements, including membership of at least two District licensed physicians. She argued that physicians have the medical knowledge and experience to support the Committee's funding decisions and ensure that proposals employ the latest medical knowledge.

Government Witness

Karl A. Racine – Attorney General for the District of Columbia

Attorney General Racine testified in support of the bill. He opened by describing the impact of the opioid epidemic on the District, with the District having one of the highest death rates in the country. In 2021, the District reported 426 opioid deaths, nearly double the number of homicides that year. In the five-year period spanning 2017 to 2021, opioids claimed the lives of 1,612 people in the District – most heavily concentrated in Wards 5, 6, 7, and 8. Nearly all involved fentanyl or a fentanyl analogue. The Attorney General noted the disparate impact of opioid use and deaths on District communities of color, with 84% of deaths during that period being those of Black Washingtonians.

Attorney General Racine described his agency's efforts to combat the opioid crisis, including the settlements at issue, their proceeds, and the requirements they impose upon opioid manufacturers. For example, one settlement provides that Johnson & Johnson can no longer manufacture or sell opioids or opioid products for distribution within the United States. Financially, the settlements will garner \$50 million over eighteen years for District residents, with another potential \$30 million from the pending Purdue Pharma settlement.

Attorney General Racine outlined some of the provisions in the settlement agreements requiring the manufacturers to remedy harms, such as the settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, which requires that at least 85 percent of the total funds that the District receives be spent on opioid abatement, and sets forth a list of approved abatement strategies.

He further described several principles to be prioritized in the District's approach to the settlement proceeds: (1) that the bulk of the proceeds be used to support opioid abatement activities; (2) that those efforts be guided by evidence-based strategies to combat opioid misuse and abuse; (3) that the District's response redress existing disparities in residents' access to prevention, treatment, recovery, and harm-reduction programs; (4) that those most impacted are part of the process; and (5) rigorous program evaluation. Attorney General Racine lastly described the bill's provisions and adherence to the principles above.

IMPACT ON EXISTING LAW

B24-0952 establishes an Opioid Abatement Advisory Commission to make recommendations to the Mayor and Council regarding the use of opioid litigation settlement proceeds and District-wide goals, objectives, and performance indicators relating to opioid use disorder and co-occurring substance use and mental health disorders. The Committee Print also establishes an Office of Opioid Abatement within the Department of Behavioral Health and sets forth its powers and duties. B24-0952 amends section 106b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b), to make conforming changes, and amends section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), to clarify the monies to be deposited into an Opioid Abatement Fund, to provide for how monies in the Opioid Abatement Fund shall be spent, to require an annual report to the Mayor, Council, and Attorney General concerning opioid abatement activities and the use of monies deposited into the Opioid Abatement Fund, and to require an audit of the Opioid Abatement Fund.

FISCAL IMPACT

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer.

RACIAL EQUITY IMPACT

A racial equity impact assessment issued by the Council Office of Racial Equity is attached to this report.

SECTION-BY-SECTION ANALYSIS

- | | |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Section 1</u> | States the short title of the legislation. |
| <u>Section 2</u> | (a) Provides definitions for “Commission”, “evidence-based”, “evidence-informed”, “Fund”, “harm reduction”, “infrastructure”, “Office”, “prevention”, “recovery”, and “treatment”. |
| <u>Section 3</u> | Establishes an Opioid Abatement Advisory Commission to (1) ensure that monies the District receives from opioid litigation settlements are expended on evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders, (2) prioritize and facilitate public involvement, accountability, and transparency in allocating and accounting for the monies, and (3) ensure that the monies have the effect of preventing, treating, and reducing opioid use disorder and co-occurring substance use and mental health disorders and reducing fatalities; and provides the Commission’s membership, meeting requirements, and powers and duties. |

- Section 4 Establishes an Office of Opioid Abatement within the Department of Behavioral Health; provides the required qualifications for the Office’s Director; and provides the Office’s powers and duties, including the creation of an annual report and public website.
- Section 5 Allows the Mayor to issue rules to implement the act.
- Section 6 Amends section 106b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b), to require the Attorney General to transfer at least 85 percent of any payments received before October 1, 2022, from the opioid settlements, and 90 percent of any payments received after that date, into the Opioid Abatement Fund; and to allow the Attorney General to elect to retain that 10 percent in the Litigation Support Fund.
- Section 7 Amends section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), to make technical and conforming changes; set forth the purposes for the monies in the Opioid Abatement Fund, provide that monies in the Fund cannot be used to reimburse expenditures incurred prior to the effective date of B24-0952 and that they shall supplement, and not supplant, other funds for the same purposes; set forth the contents of the annual report required to be provided by the Department of Behavioral Health on the use of monies in the Fund during the prior fiscal year; and require the Office of the District of Columbia Auditor to audit the Fund every five years.
- Section 8 Contains the applicability clause.
- Section 9 Contains the fiscal impact statement.
- Section 10 Contains the effective date.

COMMITTEE ACTION

On November 22, 2022, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider B24-0952, the “Opioid Litigation Proceeds Amendment Act of 2022”. The meeting was called to order at 10:30 a.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds and Mary M. Cheh. Chairperson Allen, without objection, moved the Committee Report and Print for B24-0952 en bloc, with leave for staff to make technical, conforming, and editorial changes. The Committee then voted 3-0 to approve the Committee Report and Print, with the Members voting as follows:

YES: Chairperson Allen and Councilmembers Bonds and Cheh

NO: None

PRESENT: None

ABSENT: Councilmembers Vincent C. Gray and Brooke Pinto

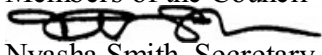
LIST OF ATTACHMENTS

- (A) B24-0952, as introduced
- (B) Notice of Public Hearing, as published in the *District of Columbia Register*
- (C) Agenda and Witness List
- (D) Witness Testimony
- (E) Fiscal Impact Statement
- (F) Racial Equity Impact Assessment
- (G) Legal Sufficiency Determination
- (H) Comparative Committee Print
- (I) Committee Print

ATTACHMENT A

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From :  Nyasha Smith, Secretary to the Council
Date : Monday, July 25, 2022
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Thursday, July 14, 2022. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Opioid Litigation Proceeds Act of 2022", B24-0952

INTRODUCED BY: Chairman Mendelson, at the request of Attorney General

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety with comments from the Committee on Health.

Attachment
cc: General Counsel
Budget Director
Legislative Services

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

July 14, 2022

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

I write to transmit the "Opioid Litigation Proceeds Act of 2022" for consideration and enactment by the Council of the District of Columbia.

In recent years, the opioid epidemic has ravaged communities across the country. Sadly, the District has not escaped the epidemic or its tragic consequences. Indeed, the District has one of the highest opioid-overdose rates in the country, and it loses hundreds of residents each year to overdoses. The District has additionally endured the many other devastating effects that opioid abuse and addiction can have on individuals, families, and communities.

Over the last several years, my office has worked to hold the opioid industry accountable for its role in fueling the epidemic, and we recently reached landmark settlements with several of the companies involved. Under the settlement agreements that we have finalized thus far, the District will receive more than \$49 million over the next 18 years. These settlement funds are primarily to be used to support efforts to curb the epidemic and mitigate its effects.


The proposed legislation sets forth the permissible uses of the settlement proceeds that will be deposited into a recently established Opioid Abatement Fund. The legislation also establishes mechanisms to assist the District in determining how best to use those proceeds consistent with the terms of the settlement agreements. More specifically, it establishes an Opioid Abatement Advisory Commission, which will make recommendations to the Mayor about how to use the funds to support evidence-based and evidence-informed opioid prevention, treatment, recovery, and harm-reduction programs. It also requires the Mayor to establish an Office of Opioid Abatement, which will, among other things, support the work of the Commission and oversee the grants process for opioid prevention, treatment, recovery, and harm-reduction programs.

I ask that the Council enact this legislation so that the District can begin using the settlement funds to help repair the damage done by the opioid epidemic.

If you have any questions, please contact me or Deputy Attorney General Emily Gunston at (202) 805-7638.

Sincerely,

Karl A. Racine
Attorney General for the District of Columbia


Chairman Phil Mendelson
at the request of the Attorney
General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To clarify the funds to be deposited into the Opioid Abatement Fund, to provide for how funds in the Opioid Abatement Fund may be spent, to establish the Opioid Abatement Advisory Commission to make recommendations to the Mayor concerning the use of the funds and provide for its composition, operations, powers and duties, to require the Mayor to establish an Office of Opioid Abatement to support the Commission, make and manage awards from the Fund, maintain oversight of expenditures, collect data from recipients, and maintain a website, and to require the Mayor to report to the Council annually concerning opioid abatement activities and the use of monies deposited into the Opioid Abatement Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Opioid Litigation Proceeds Act of 2022".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Commission" means the Opioid Abatement Advisory Commission established pursuant to section 5 of this Act.

(2) "Evidence-based" means an activity, practice, program, service, support, or strategy that has had multiple randomized controlled trials and observational studies demonstrating that the activity, practice, program, support, or strategy is effective.

As used in this definition, "effective" means an activity, practice, program, service,

support, or strategy that helps individuals avoid the development and progression of opioid and other substance use disorders or drug-related harms; reduces the adverse consequences of opioid and other substance use among persons who use these substances; or manages, slows the progression of, or supports recovery from an opioid use disorder or co-occurring substance use or mental health disorder.

(3) “Evidence-informed” means an activity, practice, program, service, support, or strategy that incorporates the best available evidence, patient needs, values, and preferences, and practitioner expertise into the decision-making process.

(4) “Fund” means the Opioid Abatement Fund established pursuant to section 5012 of the Opioid Abatement Fund Emergency Establishment Act of 2022, passed on 1st reading on June 7, 2022 (Enrolled version of Bill 24-845).

(5) “Harm reduction” means a program, service, support, tool, or resource that attempts to reduce the adverse consequences of opioid and other substance use among persons who continue to use these substances. Harm reduction addresses both conditions that precede and occur as a result of substance use.

(6) “Infrastructure” means the resources (such as personnel, buildings, or equipment) required for the District or another entity to provide prevention, treatment, recovery, and harm reduction programs, services, supports, tools, and resources to individuals with opioid use disorder and co-occurring substance use and mental health disorders.

(7) “Prevention” means primary, secondary, and tertiary efforts to avoid the development and progression of opioid use disorder and co-occurring substance use and mental health disorders and drug-related harms. Primary prevention involves

60 promoting positive youth development and helping individuals avoid the risk factors for,
61 and development of, addictive behaviors through universal and individualized efforts.
62 Primary prevention incorporates efforts in support of individualized health care,
63 including the safe prescribing of opioids and other controlled medications. Primary
64 prevention also encompasses efforts to avoid adverse childhood experiences and to avoid
65 or delay the onset of opioid use and other substance use among persons under 21 years of
66 age. Secondary prevention consists of uncovering potentially harmful substance use prior
67 to the onset of problems or opioid use disorder and co-occurring substance use and
68 mental health disorder symptoms. Tertiary prevention entails treating the medical
69 consequences of opioid and other substance use and facilitating entry into treatment so
70 further disability is minimized. Prevention strategies include continuing treatment and
71 avoiding a return to opioid and other substance use so that patients who have been treated
72 successfully may remain in remission.

73 (8) "Recovery" means a process through which an individual develops a
74 healthier life and may encompass:

75 (A) Improving the individual's quality of life, including the
76 individual's physical and mental health;

77 (B) The individual's consistent pursuit of abstinence from the
78 substances or behaviors that have negatively impacted the individual, the individual's
79 family, and the individual's community;

80 (C) Relief of the individual's symptoms, including substance
81 craving; and

(D) Improvement of the individual's relationships, social connectedness, and interpersonal skills.

(9) "Treatment" means an evidence-based or evidence-informed practice or service to intervene upon, care for, manage, slow progression of, or support recovery from opioid use disorder and co-occurring substance use and mental health disorders. Treatment is individualized to address each person's medical needs and includes screening for and diagnosing substance use disorders and co-occurring mental or physical health disorders, as well as pharmacological and non-pharmacological therapeutic interventions for opioid use disorder and co-occurring substance use and mental health disorders.

Sec. 3. The Opioid Abatement Fund

(a) Section 5012 of the Opioid Abatement Fund Establishment Act of 2022, passed on 2nd reading on June 7, 2022 (Enrolled version of Bill 24-714), is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(1) Funds received by the District, regardless of whether such funds are received as a lump sum or series of payments to be made over time, pursuant to the settlement and trust-distribution agreements entered in the following cases:

"(A) *District of Columbia v. Johnson & Johnson, et al.*, Case No. 2022-CA-001441-B (D.C. Super. Ct.);

"(B) *District of Columbia v. McKesson Corp., et al.*, Case No. 2022-CA-001401-B (D.C. Super. Ct.);

105 “(C) *District of Columbia v. McKinsey & Co.*, Case No. 2021-CA-
106 00327-B (D.C. Super. Ct.); and

107 “(D) *In re Mallinckrodt PLC*, No. 20-BK-12522 (Bankr. D. Del.);”

108 (B) A new paragraph (1A) is added to read as follows:

109 “(1A) Funds received by the District pursuant to any pre- or post-suit
110 settlement, judgment, or consent decree that the Attorney General designates as an
111 ‘opioid-related settlement, judgment, or consent decree.’ The Attorney General shall
112 notify the Council and the Mayor of any such designation within 30 days of the
113 settlement, judgment, or consent decree becoming final; and”.

114 (2) A new subsection (e) is added to read as follows:

115 “(e) Notwithstanding subsections (b)(1) and (b)(1A) of this section, the Attorney
116 General may elect to have a portion of each payment the District receives pursuant to the
117 settlements, judgments, and consent decrees referenced in subsections (b)(1) and (b)(1A)
118 of this section deposited into the Litigation Support Fund established pursuant to section
119 106b of the Attorney General for the District of Columbia Clarification and Elected Term
120 Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official
121 Code § 1-301.86b). The Attorney General shall make this election by providing the
122 Mayor and the Chief Financial Officer with written notice of the amount of the election
123 and the relevant payment. In making this election, the Attorney General shall ensure
124 compliance with all applicable settlement terms, including terms specifying the minimum
125 amount of settlement funds that must be devoted to programs and services to mitigate the
126 effects of the opioid epidemic. In no event shall the Attorney General elect to have more
127 than 15% of any payment deposited into the Litigation Support Fund.”.

(b) Section 106b of the Attorney General for the District of Columbia
Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015
(D.C. Law 18-160; D.C. Official Code §1-301.86b), is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended by striking the word “and” at the
end.

(B) Paragraph (3) is amended by striking the period at the end and
inserting the phrase “; and” in its place.

(C) A new paragraph (4) is added to read as follows:

“(4) Funds directed to or retained in the Fund pursuant to section 5012 of
the Opioid Abatement Fund Emergency Establishment Act of 2022, passed on 1st
reading on June 7, 2022 (Enrolled version of Bill 24-845), or the Opioid Abatement Fund
Establishment Act of 2022, passed on 2nd reading on June 7, 2022 (Enrolled version of
Bill 24-714).”.

(2). Subsection (d)(3)(D) is amended to read as follows:

“(2) Notwithstanding any other provision of this section, the Attorney
General shall transfer to the Opioid Abatement Fund established pursuant to section 5012
of the Opioid Abatement Fund Emergency Establishment Act of 2022, passed on 1st
reading on June 7, 2022 (Enrolled version of Bill 24-845), at least 85% of any payment
received prior to October 1, 2022, in settlement of the cases specified in section
5012(b)(1) of that act that was deposited into the Litigation Support Fund. The Attorney
General may elect to retain no more than 15% of each such payment in the Litigation
Support Fund. In making this election, the Attorney General shall ensure compliance

with all applicable settlement terms, including terms specifying the minimum amount of settlement funds that must be devoted to programs and services to mitigate the effects of the opioid epidemic.”.

Sec. 4. Permissible Uses of the Opioid Abatement Fund

(a) Money in the Opioid Abatement Fund shall be used for the following purposes:

(1) District-wide needs assessments to identify structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders to inform expenditures from the Fund;

(2) Infrastructure required for evidence-based and evidence-informed prevention, treatment, recovery, or harm reduction programs, services, supports, tools, and resources for opioid use disorder and co-occurring substance use and mental health disorders;

(3) Programs, services, supports, tools, and resources for evidence-based and evidence-informed prevention, treatment, recovery, or harm reduction for opioid use disorder and co-occurring substance use and mental health disorders;

(4)(A) Evidence-informed prevention, treatment, recovery, or harm reduction pilot programs or demonstration studies for opioid use disorder and co-occurring substance use and mental health disorders that are not evidence-based but are approved by the Mayor as an appropriate use of monies for a limited period of time as specified by the Mayor;

(B) In considering evidence-informed pilot programs and demonstration studies, the Commission and the Mayor shall assess whether the emerging

evidence supports distribution of monies for such uses, or otherwise whether there is a reasonable basis for funding such uses with the expectation of creating an evidence base for such uses;

(5) Evaluations of effectiveness and outcomes reporting for infrastructure, programs, services, supports, tools, and resources for opioid use disorder and co-occurring substance use and mental health disorders for which monies from the Fund were disbursed, such as impact on access to harm reduction, services, or treatment for disorders, or reduction in drug-related mortality;

(6) One or more data interfaces managed by the Mayor to aggregate, track, and report, free of charge and available online to the public, data on opioid use disorder and co-occurring substance use and mental health disorders, overdoses, and drug-related harms; spending recommendations, plans and reports; and outcomes of programs, services, supports, tools, and resources for which monies from the Fund were disbursed;

(7) Any other opioid abatement activities authorized by any judgment, consent decree, or settlement resulting in funds to be deposited into the Fund; and

(b) Unless otherwise required by controlling court order to refund to the federal government a portion of the litigation proceeds deposited in the Fund, monies in the Fund shall be used for prospective purposes and shall not be used to reimburse expenditures incurred prior to the effective date of this Act;

(c) Monies expended from the Fund for the purposes set forth in subsection (a) shall be supplemental to, and shall not supplant or take the place of, any other funds, including insurance benefits or District or federal funding, that would otherwise have been expended for such purposes.

197 (d) The Chief Financial Officer shall be responsible for the investment and
198 reinvestment of monies in the Fund. On or before December 31 of each year, the Chief
199 Financial Officer shall issue a public report, free of charge and available online,
200 specifying:

201 (1) An inventory of Fund investments as of September 30; and

202 (2) The net income the Fund earned for the prior fiscal year.

203 Sec. 5. Creation of the Opioid Abatement Advisory Commission.

204 (a) There is established an Opioid Abatement Advisory Commission
205 (“Commission”).

206 (b) The purpose of the Commission is to ensure that the funds the District receives
207 and deposits into the Opioid Abatement Fund are spent on infrastructure, programs,
208 services, supports, tools, and resources for prevention, treatment, recovery, and harm
209 reduction for opioid use disorder and co-occurring substance use and mental health
210 disorders and to ensure public involvement, accountability, and transparency in allocating
211 and accounting for these funds.

212 (c) The Commission shall be composed of 11 members, and shall include:

213 (1) The Attorney General or the Attorney General’s designee;

214 (2) The Director of the Department of Health or that Director’s designee;

215 (3) The Director of the Department of Behavioral Health or that Director’s
216 designee;

217 (4) The Chairperson of the Council’s Committee on Health or that
218 Chairperson’s designee;

219 (5) Four members appointed by the Mayor, to include:

220 (a) An individual who has experience in providing prevention,
221 treatment, recovery, or harm reduction services for opioid use disorder and co-occurring
222 substance use and mental health disorders;

223 (b) An individual who has expertise, experience, or education in
224 public health policy or research, medicine, or mental health services;

225 (c) An individual who has experienced opioid use disorder and co-
226 occurring substance use and mental health disorders and recovery; and

227 (d) A family member of a person or decedent who had opioid use
228 disorder and co-occurring substance use and mental health disorders;

229 (6) Three members appointed by the Council, to include:

230 (a) An individual who has experience in providing prevention,
231 treatment, recovery, or harm reduction services for opioid use disorder and co-occurring
232 substance use and mental health disorders;

233 (b) An individual who has expertise, experience, or education in
234 public health policy or research, medicine, or mental health services; and

235 (c) An individual who has experienced opioid use disorder and co-
236 occurring substance use and mental health disorders and recovery.

237 (d) The Mayor shall designate the Chair of the Commission.

238 (e) Each appointed member shall serve a three-year term, except that, upon
239 creation of the Commission, the Mayor shall designate one of the Mayor's appointees to
240 serve for an initial one-year term and one to serve for an initial two-year term, and the
241 Council shall designate one of its appointees to serve for an initial one-year term and one
242 to serve for an initial two-year term. Members shall continue to serve at the expiration of

their terms until their replacements have been appointed. Vacancies shall be filled in the same manner as the original appointment for the remainder of the term. A Commission member may serve a maximum of two full terms, with partial term service and appointments not counted toward this maximum.

(f) A Commission member may be removed by the appointing authority for failure to attend at least one-half of the scheduled meetings in a one-year period or for unethical, dishonest or bad faith conduct.

(g) Commission members shall serve without compensation but shall be reimbursed for necessary expenses incurred in carrying out duties required by the Commission that are in addition to attendance at meetings.

Sec. 6. Operations of the Commission.

(a) The Commission shall hold public meetings at least quarterly, with meetings called by the Chair or a majority of Commission members. Members may attend in person or remotely through audio or audiovisual means. Meetings shall be publicized and conducted in a manner that allows District residents to attend and participate in-person or remotely through live-stream audio or audiovisual means.

(b) A majority of the Commission's members shall constitute a quorum, and actions of the Commission shall be taken by an affirmative vote of a majority of members in attendance at a meeting where a quorum is present.

(c) Members shall disclose conflicts of interest to the Commission and refrain from participating in discussions and voting on any matter that raises such a conflict.

Sec. 7. Powers and duties of the Commission.

(a) The Commission shall have the following powers and duties:

266 (1) Establish policies and procedures for the administration of the
267 Commission;
268 (2) Recommend policies and procedures for the application, awarding, and
269 disbursement of monies from the Fund;
270 (3) Recommend goals, objectives and their rationales, sustainability plans,
271 and performance indicators relating to:
272 (A) Prevention, treatment, recovery, and harm reduction efforts for
273 opioid use disorder and co-occurring substance use and mental health disorders;
274 (B) Reducing disparities in access to prevention, treatment,
275 recovery, and harm reduction programs, services, supports, tools, and resources; and
276 (C) Improving health outcomes in traditionally underserved
277 populations, including persons of color and formerly incarcerated individuals;
278 (4) Recommend awards of monies from the Fund for the permissible
279 expenditures set forth in section 4(a);
280 (5) Recommend suspensions of allocations of monies from the Fund to
281 recipients found by the Commission or the Office of Opioid Abatement to be
282 substantially out of compliance with the requirements of their allocations or to have used
283 an award for an unauthorized purpose; and
284 (6) Submit recommendations to the Mayor for approval.
285 (b) The Commission's recommendations for the allocation of funds across areas
286 of the District shall be based on the following criteria, among others:
287 (1) The number of people per capita with an opioid use disorder in the
288 area;

(2) Disparities in access to care in an area that may preclude persons with an opioid use disorder from obtaining a diagnosis or receiving treatment;

(3) The number of overdose deaths per capita in an area;

(4) The infrastructure, programs, services, supports, tools, or other resources currently available to individuals with substance use disorders in an area; and

(5) Disparities in access to care and health outcomes in an area.

Sec. 8. Office of Opioid Abatement.

(a) The Mayor shall establish an Office of Opioid Abatement ("Office"). The Office shall perform, at a minimum, the following activities:

(1) Support the activities of the Commission by obtaining and providing public health research and policy expertise, facilities, technical assistance, and other resources;

(2) Prepare for the Commission's review goals, objectives, allocations and their rationales, sustainability plans, and performance indicators relating to prevention, treatment, recovery, and harm reduction for opioid use disorder and co-occurring substance use and mental health disorders and reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, tools, and resources;

(3) Develop policies and procedures for the application, awarding and disbursement of money from the Fund;

(4) Make and manage grants from the Fund to meet approved goals and objectives;

311 (5) Maintain oversight of expenditures from the Fund to ensure they are
312 made for authorized purposes;

313 (6) Prepare and submit to the Mayor a quarterly accounting of
314 expenditures from the Fund;

315 (7) Collect data from recipients of money from the Fund concerning the
316 effectiveness of infrastructure, programs, services, supports, tools, and resources funded,
317 including:

318 (A) How the recipient used the monies for their intended purposes;

319 (B) Where obtainable, the number of individuals served by race,
320 age, gender, and other demographic factors;

321 (C) An analysis of whether the infrastructure, program, service,
322 support, tool, or resource reduced mortality or improved prevention, treatment, harm
323 reduction, or recovery outcomes; and

324 (D) If a plan to ensure the sustainability of the infrastructure,
325 program, service, support, tool, or resource funded exists, a summary of the plan; and

326 (8) Create and maintain a website that includes, at a minimum,
327 Commission meeting attendance rolls and minutes, annual allocations of funds, recipient
328 awards, agreements, and reports, Office policies and procedures, and the Mayor's annual
329 reports.

330 (b) The Office shall employ a full-time Director and adequate staff to accomplish
331 the Office's objectives.

332 Sec. 9. Reporting and Audit

333 (a) Not later than December 31 of each year, beginning one year after the initial
334 deposit of money into the Fund, the Mayor shall provide a written report to the Council
335 detailing the District's use of monies in the Fund during the prior fiscal year. The report
336 shall be published on the Office of Opioid Abatement's website. The annual report shall
337 include:

- 338 (1) The opening and closing balance of the Fund for the fiscal year;
- 339 (2) An accounting of all credits to and expenditures from the Fund;
- 340 (3) The name and a description of each recipient of monies from the Fund,
341 and the amount awarded to each recipient;
- 342 (4) A description of each award's intended use, including the specific
343 program, service, or resource funded, the population served, and the measures that the
344 recipient will use to assess the impact of the award;
- 345 (5) The primary criteria used to determine each recipient and its respective
346 award amount;
- 347 (6) A summary of the information provided by each recipient pursuant to
348 section 8(a)(7);
- 349 (7) A listing of all applications for an award of monies from the Fund
350 received during the fiscal year;
- 351 (8) A statement as to whether all monies disbursed from the Fund
352 supplemented and did not supplant or replace any existing or future local, state, or federal
353 government funding; and
- 354 (9) The performance indicators and progress toward achieving the goals
355 and objectives for the fiscal year, including metrics on improving outcomes and reducing

356 mortality and other harms related to opioid use disorder and co-occurring substance use
357 and mental health disorders.

358 (b) The Office of the District of Columbia Auditor shall conduct an audit of the
359 monies in the Fund every five years.

360 Sec. 10. Rules.

361 The Mayor, pursuant to Title I of the District of Columbia Administrative
362 Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et*
363 *seq.*), may issue rules to implement the provisions of this act.

364 Sec. 11. Fiscal impact statement.

365 The Council adopts the fiscal impact statement of the Chief Financial Officer as
366 the fiscal impact statement required by section 4a of the General Legislative Procedures
367 Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-
368 301.47a).

369 Sec. 12. Effective date.

370 This act shall take effect following approval by the Mayor (or in the event of veto
371 by the Mayor, action by the Council to override the veto), a 30-day period of
372 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
373 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206(c)(1)), and
374 publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Emily Gunston
Deputy Attorney General for Legislative Affairs and Policy

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: July 13, 2022

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Opioid Litigation
Proceeds Act of 2022"
(AE-22-555-E)

This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

Brian K. Flowers

Brian K. Flowers

ATTACHMENT B

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

B24-0925, the “Business Records Efficiency Act of 2022”

**B24-0951, the “Automatic Voter Registration Expansion
Amendment Act of 2022”**

and

B24-0952, the “Opioid Litigation Proceeds Act of 2022”

Friday, September 16, 2022, 9:30 a.m. – 1 p.m.

Virtual Hearing via Zoom

To Watch Live:

<https://www.facebook.com/CMcharlesallen/>

On Friday, September 16, 2022, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing to consider Bill 24-0925, the “Business Records Efficiency Act of 2022”, Bill 24-0951, the “Automatic Voter Registration Expansion Amendment Act of 2022”, and Bill 24-0952, the “Opioid Litigation Proceeds Act of 2022”. The hearing will be conducted virtually via Zoom from 9:30 a.m. to no later than 1 p.m.

The stated purpose of B24-0925, the “Business Records Efficiency Act of 2022”, is to add a new evidentiary rule to Title 14 of the District of Columbia Code allowing for the authentication of business records without in-person testimony.

The stated purpose of Bill 24-0951, the “Automatic Voter Registration Expansion Amendment Act of 2022”, is to amend the District of Columbia Election Code of 1955 to expand automatic voter registration by additional District agencies and create “back-end” automatic voter registration.

The stated purpose of Bill 24-0952, the “Opioid Litigation Proceeds Act of 2022”, is to clarify the funds to be deposited into the Opioid Abatement Fund, provide for how funds in the Opioid Abatement Fund may be spent, establish the Opioid Abatement Advisory Commission to make

recommendations to the Mayor concerning the use of the funds and provide for its composition, operations, powers and duties, require the Mayor to establish an Office of Opioid Abatement to support the Commission, make and manage awards from the Fund, maintain oversight of expenditures, collect data from recipients, and maintain a website, and require the Mayor to report to the Council annually concerning opioid abatement activities and the use of monies deposited into the Opioid Abatement Fund.

The Committee invites the public to provide oral and written testimony. Public witnesses seeking to provide oral testimony at the Committee's hearing must thoroughly review the following instructions:

- Anyone wishing to provide oral testimony must email the Committee at judiciary@dccouncil.us with their name, telephone number, organizational affiliation, and title (if any), by the **close of business on Friday, September 9.**
- The Committee will approve witnesses' registrations based on the total time allotted for public testimony. The Committee will also determine the order of witnesses' testimony.
- Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals (and any subsequent representatives of the same organizations) will be allowed a maximum of three minutes. In order to accommodate additional public witnesses, the Committee may reduce witnesses' allotted time for testimony but will inform witnesses if it plans to do so.
- Witnesses are not permitted to yield their time to, or substitute their testimony for, the testimony of another individual or organization.
- If possible, witnesses should submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.
- Witnesses who anticipate needing language interpretation are requested to inform the Committee as soon as possible, but no later than five business days before the hearing. The Committee will make every effort to fulfill timely requests; however, requests received fewer than five business days before the hearing may not be fulfilled.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on Wednesday, September 21.**

ATTACHMENT C

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

B24-0925, the “Business Records Efficiency Act of 2022”

**B24-0951, the “Automatic Voter Registration Expansion
Amendment Act of 2022”**

and

B24-0952, the “Opioid Litigation Proceeds Act of 2022”

Friday, September 16, 2022, 9:30 a.m. – 1 p.m.

Virtual Hearing via Zoom

To Watch Live:

<https://www.facebook.com/CMcharlesallen/>

AGENDA AND WITNESS LIST

I. CALL TO ORDER

II. OPENING REMARKS

III. WITNESS TESTIMONY

B24-0952, the “Opioid Litigation Proceeds Act of 2022”

- i. Public Witnesses
- ii. Government Witness
 - 1. Karl A. Racine, Attorney General for the District of Columbia

B24-0925, the “Business Records Efficiency Act of 2022”

- i. Public Witnesses
- ii. Government Witness
 - 1. Elana Suttenger, Special Counsel for Policy & Legislative Affairs, United States Attorney's Office for the District of Columbia

B24-0951, the “Automatic Voter Registration Expansion Amendment Act of 2022”

- i. Public Witnesses
 - 1. Neal Ubriani, Policy & Research Director, Institute for Responsive Government
 - 2. Sarah Gonski, Senior Policy Advisor, Center for Secure & Modern Elections
 - 3. Lata Nott, Senior Legal Counsel for Voting Rights, Campaign Legal Center
 - 4. Sam Bonar, Co-Director, Delicious Democracy
- ii. Government Witness
 - 1. Monica Holman Evans, Executive Director, Board of Elections

IV. ADJOURNMENT

ATTACHMENT D

September 15 , 2022

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW #504
Washington, D.C. 20004

Dear Chairman Mendelson:

The members of the Addiction & Public Policy Initiative at the Georgetown University Law Center's O'Neill Institute for National and Global Health Law submit this letter in response to the "Opioid Litigation Proceeds Act of 2022," about which the Judiciary Committee of the Council of the District of Columbia will hold a hearing on Friday, September 16, 2022.

Over 100,000 people suffer fatal overdoses every year in the United States and, since 2000, one million people have lost their lives. Lawsuits against opioid manufacturers, distributors, and retailers create the opportunity to address this critical issue. Without firm commitment and planning, however, the proceeds may not be directed toward preventing and addressing substance use disorders, overdoses, and drug-related harms. As the tobacco litigation settlements of the 1990s demonstrate, jurisdictions must implement comprehensive strategies of oversight and accountability in order to safeguard public health litigation proceeds and ensure that the monies are used as intended: to address existing harm and to prevent further harm.

In October 2021, the O'Neill Institute, in collaboration with the Legislative Analysis and Public Policy Association, the Center for U.S. Policy, and Brown & Weinraub, and with support from the White House Office of National Drug Control Policy, published the "Model Opioid Litigation Proceeds Act," a model law for states and territories that advances a strategy to maximize opioid litigation settlement proceeds. This model law lays the groundwork for accountability and effectiveness of opioid litigation expenditures in two ways: first, by creating a separate, designated fund for opioid litigation-related proceeds and, second, by appointing a diverse oversight council representing individuals with varied backgrounds and expertise to oversee expenditures.

Creating a separate fund for opioid litigation proceeds will protect these dollars from inappropriate diversion. The tobacco settlements serve as a cautionary tale for plaintiff jurisdictions receiving opioid litigation proceeds; as payouts continue, even to this day, only a small percentage of tobacco litigation settlement proceeds are actually used to address tobacco use in the United States. Today, the overdose epidemic is too great a threat to public health to allow for the allocation of billions of settlement

dollars to be absorbed into general funds or misappropriated to other interests. This epidemic requires immediate action; as such, every dollar in opioid litigation settlement proceeds must be directed toward ameliorating this crisis.

In order to maximize these proceeds, jurisdictions should create a designated council with combined expertise in public health, budgeting, personal experience, and substance use disorder treatment, prevention, recovery, and harm reduction service delivery. Gathering these experts and empowering them to determine how best to spend settlement proceeds will ensure that the needs of affected communities are properly addressed. Too often, those who are most affected by a crisis, including people with substance use disorder, justice-involved populations, people who are unhoused, and racial and ethnic minorities, are not included in important policy discussions and decision making; the Opioid Litigation Proceeds Council ensures that those most affected have a seat at the table.

In sum, we at the O'Neill Institute have determined that maximizing opioid litigation proceeds can best be accomplished through the development of a designated proceeds fund and a committee of experts that oversee the distribution of these dollars. We wish to further emphasize the importance of using evidence-based public health strategies to address the overdose crisis; in addition, we highlight the critical need for empowering experts, including healthcare professionals, policy experts, and people with lived experience. Previous tobacco settlements serve as a cautionary tale, one which we must heed in order to prevent repeating the same mistakes.

Sincerely,

Somer Brown, Esq.
Shelly Weizman, Esq.

September 16, 2022

Councilmember Charles Allen
Chair, Committee on Judiciary and Public Safety
1350 Pennsylvania Ave NW
Washington, DC 20004

Dear Chair Allen,

The Medical Society of the District of Columbia (MSDC) is the largest medical organization representing metropolitan Washington physicians in the District. We advocate on behalf of all 12,000 plus licensed physicians in the District and seek to make the District “the best place to practice medicine”.

We thank you for holding a hearing on B24-952, the Opioid Litigations Proceeds Act. MSDC supports the creation of an Opioid Abatement Advisory Committee to manage the funds received by the District from national opioid settlements. These funds are best used to address the public health priorities around addiction and overdose, and the Society feels close oversight of the fund to assign the money fairly and equitably is ideal. In addition, I noticed the legislation has some of the best practices outlined by the O’Neill Institute at Georgetown University.

The Society’s one suggested change to is include language ensuring that at least two District licensed physicians are included on the panel. Physicians have the medical knowledge and experience to guide the Committee’s decisions on funding, to ensure that proposals or initiatives match the latest medical knowledge in this field. The District, including MSDC and MedChi DC, have numerous physicians with expertise in addiction and opioids that can provide needed guidance to this process.

Please contact our office at 202-466-1800 or hay@msdc.org to discuss further, and please do not hesitate to contact us with any questions or concerns about this bill or any other.

Sincerely,



Kirstiaan Nevin, MD
President
Medical Society of the District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Statement of Karl A. Racine
Attorney General for the District of Columbia

Before the Committee on the Judiciary and Public Safety
Honorable Charles Allen, Chairperson

Public Hearing on
B24-0952, the “Opioid Litigation Proceeds Act of 2022”
Friday, September 16, 2022
Virtual Hearing via Zoom

Good morning, and thank you, Chairman Allen and Councilmembers, for the opportunity to speak to you about the “Opioid Litigation Proceeds Act of 2022.” I am joined today by two of my colleagues from the Office of the Attorney General—Kate Konopka, Deputy Attorney General for the Public Advocacy Division, and Emma Simson, Senior Policy Counsel—who are available to help answer questions about the bill.

As you are well aware, in recent years, the opioid epidemic has inflicted immense damage on communities across the country. The District is no exception. Opioid addiction has disrupted the lives of many District residents and has had ripple effects on their families, friends, and communities.¹ Opioids have also claimed the lives of far too many District residents. Indeed, the District now has one of the highest opioid death rates in the country, and it loses hundreds of residents each year to opioid fatalities. In 2021 *alone*, the District reported 426 opioid deaths, nearly double the number of homicides that year. And in the five-year period spanning 2017 to 2021, opioids claimed the lives of 1,612 people in the District.² These deaths have been most heavily concentrated in Wards 5, 6, 7, and 8.³ Nearly all involved fentanyl or a fentanyl analog.⁴

Figure 1: Number of Overdose Fatalities By Year, 2014-2021



Source: Office of the Chief Medical Examiner for the District of Columbia, *Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022* (June 17, 2022).

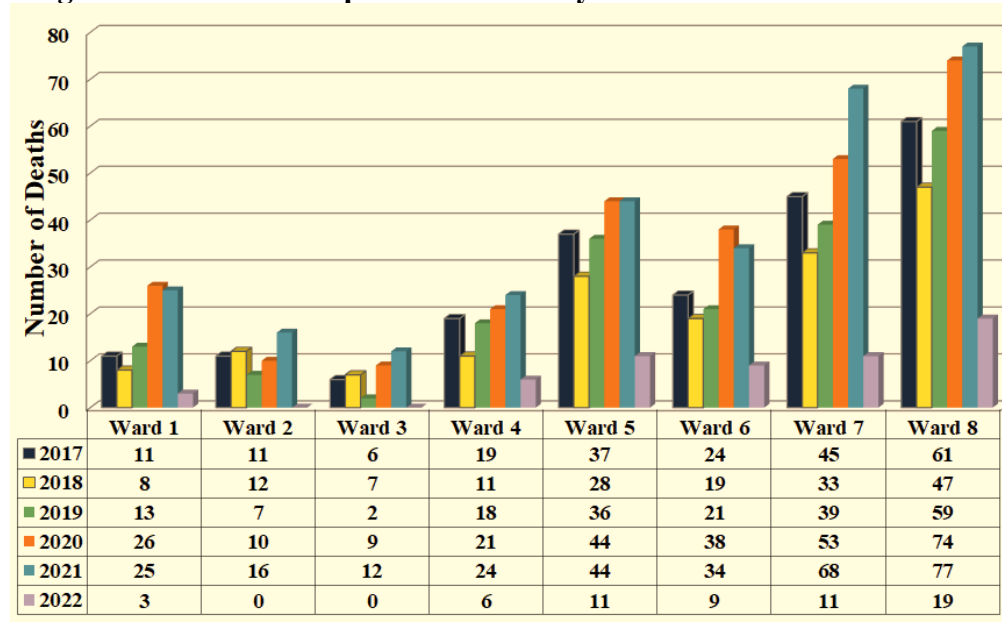
¹ As of 2017, an estimated 2,000 District residents suffered from an opioid use disorder. See Feijun Luo, Mengyao Li & Curtis Florence, *State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose—United States, 2017*, Morbidity & Mortality Weekly Report (Apr. 16, 2021), available at: <https://www.cdc.gov/mmwr/volumes/70/wr/mm7015a1.htm#suggestedcitation>.

² See Office of the Chief Medical Examiner for the District of Columbia, *Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022*, at 1 (June 17, 2022) (OCME Report), available at: <https://ocme.dc.gov/sites/default/files/dc/sites/ocme/Opioid%20related%20Overdoses%20Deaths%206.17.21%20FINAL.pdf>

³ See OCME Report at 4.

⁴ See OCME Report at 2.

Figure 2: Number of Opioid Fatalities By Ward of Residence and Year

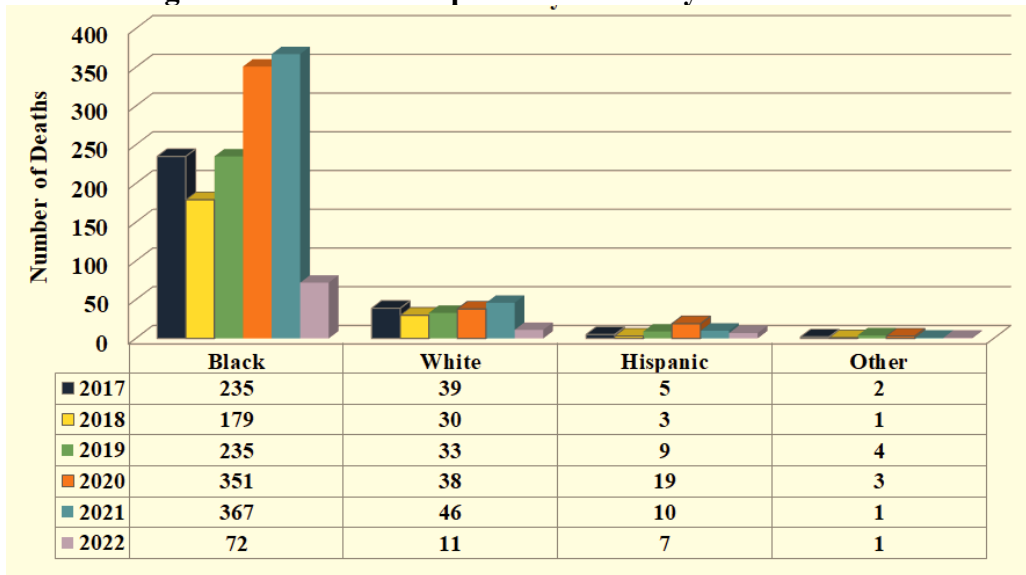


Source: Office of the Chief Medical Examiner for the District of Columbia, *Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022* (June 17, 2022).

The opioid crisis has also exacerbated racial inequities in the District. Due to historical and ongoing discrimination, people of color face greater barriers to accessing care, including treatment and recovery services. That disparate access is almost certainly a factor in the staggering differences in overdose fatalities by race; in the District, 84% of those who died from opioid overdoses from 2017 to 2021 were Black, even though studies indicate that people of all races use illegal substances at similar rates.⁵

⁵ See OCME Report at 3; Colleen Grablick, *Racial Disparities in D.C.'s Opioid Arrests Underscore Need for Decriminalization, Advocates Say*, DCist (Aug. 29, 2022), available at: <https://dcist.com/story/22/08/29/racial-disparities-dc-opioid-arrests/>.

Figure 3: Number of Opioid Fatalities By Race and Year



Source: Office of the Chief Medical Examiner for the District of Columbia, *Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022* (June 17, 2022).

Sadly, this crisis did not occur simply by chance. Beginning in the 1990s, opioid manufacturers, distributors, and other entities downplayed the risks of opioid addiction and ignored signs of opioid misuse—all in pursuit of bigger profits. For the last several years, my office has sought to hold those actors accountable for fueling the crisis, by filing lawsuits to require them to provide resources to help our community repair the damage done. My office’s dedicated staff of lawyers, paralegals, and other professionals has spent thousands of hours investigating and negotiating with those companies to achieve a beneficial resolution for the District.

That work is paying off. Together with other state attorneys general, we recently finalized landmark settlement agreements with several of the companies involved in the opioid industry. Those agreements require the companies to make significant changes to their business practices. As one example, Johnson & Johnson can no longer manufacture or sell opioids or opioid products for distribution within the United States. And, particularly important to today’s conversation, the agreements require the companies to pay roughly \$50 million to the District over the next 18 years to help address the effects of the opioid crisis, and another settlement could bring in an additional \$30 million.⁶

Now, we must turn to the critical task of determining how to ensure that these settlement funds are used wisely to have maximum impact in abating the opioid crisis in the District. In taking on that task, we are not writing on a blank slate. The opioid settlement agreements we have reached contain requirements designed to ensure that the proceeds are used to repair the harms of the epidemic. For instance, our settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation includes a term requiring that at least 85% of the total funds that

⁶ Purdue Pharma’s bankruptcy plan, which would require Purdue Pharma to pay the District roughly \$30 million, is under review at the U.S. Court of Appeals for the Second Circuit. If the plan is approved, the District could begin receiving funds in as little as four months after the approval.

the District receives be spent on opioid abatement, and it sets forth a list of approved abatement strategies. Although that list is broad and allows for flexibility to fit local needs, the settlement specifies certain core, evidence-based strategies that must be prioritized.

Further, over the last several years, as our nation has grappled with the crisis, public health and other experts have identified a number of principles that ought to guide our approach to using the opioid settlement proceeds. First and foremost among those principles, we must ensure that the bulk of the settlement proceeds are used to support opioid abatement activities. Second, there is considerable evidence about what works in preventing and combatting opioid misuse and abuse.⁷ For instance, there is extensive evidence that expanding community access to naloxone, expanding medication-assisted treatment, and providing cash and other rewards to individuals for adhering to treatment programs are highly effective methods for improving outcomes related to opioid use disorders.⁸ Unfortunately, the District has, at times, been slow to adopt proven practices such as these.⁹ In deciding how to spend the settlement funds we receive, it is critical that we rely on experts and available evidence to ensure that the money is spent on the most promising evidence-based and evidence-informed strategies and services. Third, we must ensure that our response is an equitable one that takes account of and seeks to redress existing disparities in residents' access to prevention, treatment, recovery, and harm-reduction programs. Fourth, we must guarantee that those who have been most affected by the opioid crisis have a seat at the table. And finally, we must rigorously evaluate the effectiveness of our programs and services and guarantee public oversight and accountability for the use of these funds.¹⁰

The proposed bill before you—which is based on the Model Opioid Litigation Proceeds Act¹¹—seeks to both ensure compliance with the settlement agreements and put these principles into practice. With respect to ensuring that the bulk of the settlement proceeds are devoted to opioid abatement activities, the bill requires that at least 85% of each settlement payment be deposited into a special Opioid Abatement Fund. That Fund can only be used to support authorized opioid abatement activities, such as providing grants to support evidence-based and evidence-informed prevention, treatment, recovery, and harm-reduction programs. The bill also specifies that all monies expended from the Fund must be supplemental to and shall not supplant funds that otherwise would have been expended on those activities. Further, none of the proceeds deposited

⁷ See, e.g., Evidence-Based Practices Resources Center, U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration, <https://www.samhsa.gov/resource-search/ebp> (last accessed Sept. 12, 2022).

⁸ See Michael L. Barnett, et al., *Evidence Based Strategies for Abatement of Harms from the Opioid Epidemic* 8-10, 14, 32 (Nov. 2020), available at: <https://www.lac.org/assets/files/TheOpioidEbatement-v3.pdf>.

⁹ See, e.g., Peter Jamison, *Pure Incompetence*, Wash. Post (Dec. 19, 2018), <https://www.washingtonpost.com/graphics/2018/local/dc-opioid-epidemic-response-african-americans/>.

¹⁰ See Johns Hopkins Bloomberg School of Public Health, *Principles for the Use of Funds from the Opioid Litigation* (last accessed Sept. 12, 2022), available at: <https://opioidprinciples.jhsph.edu/the-principles/>; Shelly Weizman, Sonia Canzeter, Somer Brown, & Taled El-Sabawi, *Maximizing the Impact of Opioid Litigation to Address the Overdose Epidemic* (Mar. 2022), available at: https://oneill.law.georgetown.edu/wp-content/uploads/2022/03/ONL_Opioid_Summit_5PG_Brief_P6.pdf.

¹¹ The Model Opioid Litigation Proceeds Act was developed by the O'Neill Institute for National and Global Health Law, the Legislative Analysis and Public Policy Association, the Center for U.S. Policy, and Brown & Weinraub, PLLC, with financial support from the White House Office of National Drug Control Policy, see *Model Opioid Litigation Proceeds Act* (Sept. 2021), available at: <http://legislativeanalysis.org/wp-content/uploads/2021/11/Model-Opioid-Litigation-Proceeds-Act-FINAL.pdf>.

into the Fund can, at any point, revert back to the General Fund, thereby ensuring that the settlement proceeds will be used to address the opioid crisis rather than other priorities.

As for implementing the other core principles, the bill directs the Mayor to establish an Office of Opioid Abatement, tasked with administering and overseeing a grantmaking process with certain guardrails about permissible expenditures to ensure the funds are used wisely. In particular, the grants can only be used for enumerated purposes, such as funding evidence-based and evidence-informed strategies and funding time-limited pilot programs and demonstration studies for strategies that are not evidence-based but show promise.¹² The bill also establishes an Opioid Abatement Advisory Commission to advise the Office of Opioid Abatement about appropriate goals for the Fund, key performance indicators, and grant awards and suspensions. The 11-member commission will ensure input from a range of stakeholders with valuable expertise and experience; it will include representatives from across District government, outside experts, and affected individuals, and it will hold public meetings to allow for even wider participation. The commission will review available medical and social-science research to identify the best evidence-based and evidence-informed strategies for combatting opioid use disorders, and it will apply that information to identify the approaches that best meet the District's unique needs. The commission will also review data about disparities in access and outcomes to ensure that grants are awarded with an eye towards greater equity.

Further, to bolster public oversight and accountability, the bill requires the Office of Opioid Abatement to establish a public website containing a host of information, including information about the Commission's work and grant awards. And to facilitate transparency and rigorous oversight, the bill requires the Mayor to submit detailed annual reports to the Council about the work being done.

To be sure, this bill represents just one step in a much larger effort to respond to the opioid crisis in the District. And OAG's work to hold the opioid industry accountable is not done. We continue to pursue settlements with additional actors, and we hope that work will continue to bring critical resources to the District, to help reduce the number of families negatively harmed by this all-too-often-fatal epidemic. But, as the District begins to receive the first payments from the settlements finalized thus far, it is important that we create systems to ensure the funds are used equitably, effectively, and transparently. And it is important that we do so swiftly; until the Council passes legislation, the District cannot begin spending the settlement funds and cannot even receive certain of the settlement funds. I therefore urge the Council to move quickly to enact this bill so that our community can ramp up the work being done to redress the harms of the epidemic.

¹² As one example, the money could be used to support demonstration studies for supervised injection sites, a harm-reduction strategy that shows real promise. *See* Barnett at 34.

ATTACHMENT E

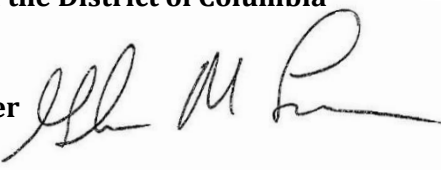
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee
Chief Financial Officer 

DATE: November 21, 2022

SUBJECT: Fiscal Impact Statement – Opioid Litigation Proceeds Amendment Act of 2022

REFERENCE: Bill 24-952, Draft Committee Print as provided to the Office of Revenue Analysis on November 4, 2022

Conclusion

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The balance of the Opioid Abatement Fund at the Department of Health must be reprogrammed to the Opioid Abatement Fund at the Department of Behavioral Health before the bill can be implemented.

Background

The District recently settled with several of the opioid producing companies accused of exacerbating and profiting from the opioid crisis. Under the settlement agreements, the District will receive more than \$49 million over the next 18 years. These settlement funds will be deposited into the Opioid Abatement Fund and will be used to support efforts to curb the epidemic and mitigate its effects.

The bill establishes an Opioid Abatement Advisory Commission (Commission) which will make recommendations to the Mayor on how to use the Opioid Abatement Fund (Fund) to support opioid abuse prevention, treatment, recovery, and harm-reduction programs. The Commission will be composed of 21 members including representative from the Department of Behavioral Health (DBH), Department of Health (DC Health), Department of Health Care Finance, Deputy Mayor for Health and Human Services, Deputy Mayor for Public Safety and Justice, Chief Medical Examiner, Attorney General, Council Committee on Health, members from the public that are experts in medicine and opioid addiction, and community organizations. The Commission must hold quarterly public meetings and vote on its actions through an affirmative vote by a majority of its members.

The Commission is required to do the following:

- Establish procedures for its operations;
- Make recommendations to Mayor and Council of District-wide goals, objectives, and performance indicators relating to opioid use disorder prevention, treatment, harm reduction, and recovery;
- Establish governing principles, policies, and procedures for the application and awarding of grants from the Fund; and
- Manage the Fund and award grants from the Fund.

The bill establishes the Office of Opioid Abatement (Office) within the DBH to support the work of the Commission and oversee the grant process for opioid abatement programs. The Office will be led by a Director and must:

- Conduct a District-wide needs assessment to identify structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders;
- Support the Commission's activities by providing staffing, research and policy expertise, facilities, technical assistance, and other resources;
- Assist the Commission in preparing its recommendations regarding goals, objectives, and performance indicators;
- Integrate the work of the Office and Commission, including Fund expenditures, with existing District strategic planning related to opioid use disorders;
- Develop governing principles, policies, and procedures for the application and award of monies and grants from the Fund;
- Oversee expenditures from the Fund, including preparing a quarterly accounting of expenditures from the Fund and the Fund balance;
- Issue, manage, and oversee awards and grants from the Fund;
- Prepare annual reports; and
- Create and maintain a public website.

The bill makes clarifying changes¹ to the Opioid Abatement Fund. Specifically, the bill:

- Establishes DBH as the agency responsible for administering the Fund;
- Adds an additional settlement agreement as a funding source;
- Adds funding received by the District from any pre- or post-suit settlement, judgment, or consent decree as a funding source;
- Establishes the permissible use of money in the Fund including:
 - Supporting the Commission and Office operations and personnel;
 - Providing grant awards;
 - Establishing infrastructure for prevention, recovery, treatment, or harm reduction activities;
 - Evaluating the effectiveness and outcomes;
 - Developing publicly available data interfaces; and
 - Funding auditing expenses;
- Allows the Office of the Attorney General to deposit 15 percent of any settlement payment received by the District prior to October 1, 2022 and 10 percent of any settlement thereafter into the Litigation Support Fund;

¹ By amending Section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441).

The Honorable Phil Mendelson

FIS: Bill 24-952, "Opioid Litigation Proceeds Amendment Act of 2022," Draft Committee Print as provided to the Office of Revenue Analysis on November 4, 2022

- Requires DBH to report annually on the Fund spending; and
- Requires the District of Columbia Auditor to audit the Fund every five years.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The balance of the Opioid Abatement Fund at DC Health must be reprogrammed to DBH before the bill can be implemented.

The National Opioid Settlement Agreement payments are structured in a way that the District will receive annual funding transfers from the National Opioid Settlement Fund to use for opioid abatement programs. The District has received \$8.68 million which has been deposited into the Opioid Abatement Fund at DC Health. This funding must be reprogrammed to DBH in order for the agency to implement the requirements in the bill.

Once the funding is moved to DBH, the agency will use a portion of the funding to establish the Office of Opioid Abatement. DBH will hire a Director, Grants Manager, Program Analyst, and Staff Assistant to carry out the duties of the Office and to support the functions of the Commission. DBH will also need to purchase computers and office supplies. The total cost of establishing the Office of Opioid Abatement is \$268,000 in fiscal year 2023 and \$1.95 million over the financial plan.

Opioid Litigation Proceeds Amendment Act of 2022 Office of Opioid Abatement					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Salary ^(a)	\$204,000	\$416,000	\$423,000	\$430,000	\$1,474,000
Fringe ^(b)	\$54,000	\$112,000	\$116,000	\$121,000	\$402,000
Office Supplies ^(c)	\$10,000	\$20,000	\$20,000	\$20,000	\$70,000
Total Costs	\$268,000	\$547,000	\$559,000	\$572,000	\$1,946,000

Table Notes:

- (a) Assumes one Grade 14 Director, one Grade 13 Grants Manager, one Grade 12 Program Analyst, and one Grade 9 Staff Assistant. Assumes an April 1, 2023 start date and salary growth of 1.75 percent.
- (b) Assumes fringe benefit rate of 26.2 percent and fringe cost growth of 2.375 percent.
- (c) Includes the cost of cell phones, laptops, and other supplies.

ATTACHMENT F



BILL 24-0952

RACIAL EQUITY IMPACT ASSESSMENT OPIOID LITIGATION PROCEEDS AMENDMENT ACT OF 2022

TO: The Honorable Phil Mendelson, Chairman, Council of the District of Columbia
FROM: Namita Mody, Director, Council Office of Racial Equity
DATE: November 22, 2022

COMMITTEE

Committee on the Judiciary and Public Safety

BILL SUMMARY

Bill 24-0952 creates the Opioid Abatement Advisory Commission and Office of Opioid Abatement. In addition, the bill establishes procedures for the operation of the Opioid Abatement Fund, Opioid Abatement Advisory Commission, and Office of Opioid Abatement.

RACIAL EQUITY IMPACTS

- Bill 24-0952's provisions on the Opioid Abatement Fund has an inconclusive impact on Black residents, Indigenous residents, and other residents of color.
- Bill 24-0952's provisions establishing the Opioid Abatement Advisory Commission will likely improve health outcomes for Black District residents.
- Positively, the bill requires members of the Commission to have lived experience with opioid use or substance use disorders.
- The creation of the Office of Opioid Abatement will have an inconclusive impact on Black residents, Indigenous residents, and other residents of color.

FURTHER CONSIDERATIONS

- This Opioid Abatement Fund provision does not require data collection disaggregated by race.
- There may be unintentional, negative impacts of labeling areas of the District as "hotspots" for opioid use, including increased policing.
- The bill does not detail the mechanism by which they will ensure public involvement and accountability in Fund spending.
- The efficacy of the Stakeholder Commission will depend on the Commission's relationship to the Office of Opioid Abatement, the Office's efficacy to implement the identified goals, and vice versa.
- The bill does not provide compensation for Commission members, which may limit the ability of people with lived experience with the opioid epidemic to participate.
- The provision creating an Office of Opioid Abatement does not require data collection disaggregated by race.
- The bill does not address the criminalization of drug and substance abuse as an exacerbating factor to racial disparities in the opioid epidemic.

Content Warning: The document you are about to read is a Racial Equity Impact Assessment, a careful and organized examination of how Bill 24-0952 will affect different racial and ethnic groups. We hope that this assessment sparks a conversation that is brave, empathetic, thoughtful, and open-minded. The following content touches on **racism, enslavement, drug addiction, substance use, substance use disorder, overdose, death, the opioid epidemic, opioid use disorder, fentanyl, heroin, suicide, the racial wealth gap, mass incarceration, policing, and medical racism**. Some or all of these issues may trigger a strong emotional response. We encourage you to use this knowledge in the way that is most helpful to you.

BACKGROUND

This REIA's format differs slightly than CORE's usual format because of the bill's length and substance. The REIA begins with an overview of the relevant terms for the bill, background, and summary. The racial equity analysis follows, corresponding to each of the four sections of the bill. Last, we include a "Further Considerations" section for the bill as a whole.

FIGURE 1 RELEVANT TERMS FOR BILL 24-0952

TERM	BILL DEFINITION
COMMISSION	The Opioid Abatement Advisory Commission
EVIDENCE-BASED	<p>An activity, practice, program, service, support, or strategy that has gone through multiple randomized controlled trials and studies.</p> <p>The strategies studied helped:</p> <ul style="list-style-type: none"> ▪ people avoid opioid, other substance use disorders, or drug-related harms ▪ reduce the negative consequences of opioid and substance use ▪ manage, slow the progression of, or support the recovery of people with opioid use disorder or other co-occurring substance use or mental health disorders.
EVIDENCE-INFORMED	<p>An activity, practice, program, service, support, or strategy that incorporates into the decision-making process:</p> <ul style="list-style-type: none"> ▪ the best available evidence ▪ patient needs, values, and preferences ▪ practitioner expertise.
FUND	The Opioid Abatement Fund
HARM REDUCTION	An activity, practice, program, service, support, or strategy that addresses both 1) conditions that lead to, and occur because of, substance use, and 2) tries to reduce the negative consequences of opioid and other substance use.
INFRASTRUCTURE	Resources, like staff, buildings, or equipment that are required to provide evidence-based and evidence-informed harm reduction services to people with opioid use disorder and co-occurring substance use and mental health disorders.
OFFICE	The Office of Opioid Abatement, established by this bill.

PREVENTION	<p>The efforts to help people avoid developing and progressing in opioid use disorder and other co-occurring substance use and mental health disorders and drug-related harms.</p>
RECOVERY	<p>The process through which someone develops a healthier life, which might include:</p> <ul style="list-style-type: none"> ▪ improving their quality of life, including physical and mental health ▪ avoiding the use of substances or engaging in behaviors that have negatively affected them, their family, and their community ▪ relieving individual symptoms, like craving substances ▪ improving relationships, social connectedness, and interpersonal skills.
TREATMENT	<p>An evidence-based or evidence-informed activity, practice, program, service, support, or strategy that:</p> <ul style="list-style-type: none"> ▪ intervenes, cares for, manages, slows the progression of, or supports recovery from opioid use disorder or co-occurring substance use or mental health disorders ▪ is individualized to a person's medical needs ▪ screens and diagnoses substance use disorders, co-occurring mental or physical health disorders, and pharmacological and non-pharmacological therapeutic interventions (treatment involving medicine or talk therapy, for example) for opioid use disorder or co-occurring substance use or mental health disorders.

Source: Committee Print

The Opioid Epidemic in the District

According to the Model Opioid Litigation Proceeds Act (the model on which this bill was designed), 21.2 million Americans had a substance use disorder in 2018, but only 17 percent of those with a substance use disorder received any kind of treatment.¹ Of the people who were perceived to need treatment but did not receive treatment, almost 40 percent said they were not ready to stop using, almost 24 percent said they did not know where to go, and almost 21 percent said they did not have health care coverage and could not afford the costs of treatment.²

In 2018, two million people in the US had opioid use disorder.³ The opioid epidemic does not affect people equally across race, despite similar rates of use. Opioid addiction and overdoses increased nationally during the COVID-19 pandemic, but at a disproportionately greater rate for Black people than white people.⁴ In 2020, the rate of Black people dying of opioid overdoses in the U.S. increased by 44 percent, which was double the rate of white people.⁵

¹ Legislative Analysis and Public Policy Association, Center for U.S. Policy, Brown & Weinraub, PLLC, and O'Neill Institute for National & Global Health Law at Georgetown Law. "[Model Opioid Litigation Proceeds Act](#)," September 2021, 36.

² Ibid.

³ Ibid.

⁴ Warraich, Haider. "[Opioid Addiction and Overdoses Are Increasingly Harming Black Communities](#)." Harvard Health Publishing at Harvard Medical School (blog), August 15, 2022.

⁵ Ibid.

The District's rates of opioid overdoses mirrors the national data. Between 2017 and 2022, 84 percent of those who died of opioid overdoses were Black and 12 percent were white (See Figure 2).⁶

The opioid epidemic has been considered to mostly affect white people living in rural areas of the U.S.⁷ Dr. Haider Warraich writes in *Harvard Health* that this was intentional:

...pharmaceutical companies targeted these areas to avoid the glare of law enforcement agencies. Another reason why white Americans were more likely to be addicted to opioids was because Black people were much less likely to be prescribed opioids for pain control, even when medically indicated in emergent conditions. However, new data from the Centers for Disease Control and Prevention (CDC) shows that the reasons the opioid epidemic is now growing at breakneck pace is because of its rapid infiltration into Black communities.⁸

Research shows that the rise in opioid deaths was due to a rise of fentanyl, an opioid that is more lethal than others, imported from overseas.⁹ The DC Office of the Chief Medical Examiner reported that in 2020, 94 percent of people who died from opioid overdose were caused “by fentanyl or a fentanyl-analogue.”¹⁰ In comparison, 62 percent of people who died from opioid overdoses in 2016 were caused by fentanyl.¹¹

FIGURE 2 Black District residents make up the majority of opioid overdose deaths.

YEAR	BLACK	WHITE	HISPANIC	OTHER
2022	72	11	7	11
2021	367	46	10	1
2020	351	38	19	3
2019	235	33	9	4
2018	179	30	3	1
2017	235	39	5	2
TOTAL	1439	197	53	22
OVERALL PERCENTAGE 2017-2022	84%	12%	3%	1%

Source: Office of the Chief Medical Examiner, “[Opioid-related Fatal Overdoses: January 1, 2017 to March 31, 2022.](#)”

⁶ Office of the Chief Medical Examiner. “[Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022.](#)” Washington, DC: Government of the District of Columbia Office of the Chief Medical Examiner, June 17, 2022.

⁷ Warraich, Haider. “[Opioid Addiction and Overdoses Are Increasingly Harming Black Communities.](#)” Harvard Health Publishing at Harvard Medical School (blog), August 15, 2022.

⁸ Ibid.

⁹ Ibid.

¹⁰ Office of the Chief Medical Examiner. “[Opioid-Related Fatal Overdoses: January 1, 2017 to March 31, 2022.](#)” Washington, DC: Government of the District of Columbia Office of the Chief Medical Examiner, June 17, 2022.

¹¹ Ibid.

In addition, medical prescriptions for opioids dropped due to clinic and pharmacy closures during the pandemic—a sudden stop in opioid use increases the risk of suicide and increases the likelihood that someone turns to illicit opioids like heroin and fentanyl.¹²

This increasing racial inequity in opioid use and overdoses is partly due to racially inequitable access to treatment. Of the people who died of opioids, only 8 percent of Black people received treatment for substance use nationally, compared to 14 percent overall.¹³ The closures of services during the pandemic also affected treatment—and as CORE has written frequently, there is a marked racial inequity in access to medical care and treatment, leading to worse health outcomes for Black people and other people of color.¹⁴

The opioid epidemic exacerbates existing racial inequities nationally. CDC research has shown that in areas of the greatest income inequality, Black people died from opioids at twice the rate of areas with the least income inequalities.^{15,16}

Research has found that opioid use does not only affect the person who uses the drug but has spillover effects into their families and communities as well.¹⁷

Bill Summary

The following content describes Bill 24-0952 in plain language for the purposes of discussion. This explanation is not a substitute for the bill, or if passed, the law.

The plain language rewrite of the bill and corresponding racial equity impacts are organized into the following three sections (the section organization differs slightly from the bill's organization for the purposes of this analysis):

- 1) The Opioid Abatement Fund
- 2) Opioid Abatement Advisory Commission
- 3) Office of Opioid Abatement

The Opioid Abatement Fund has already been established in current law. This bill specifies what the Fund can be used for, creates the Opioid Abatement Advisory Commission and Office of Opioid Abatement, and establishes procedures for the operation of the Fund, Commission, and Office. The Commission provides recommendations to the Office, which adopts and implements them.

¹² Warraich, Haider. “[Opioid Addiction and Overdoses Are Increasingly Harming Black Communities](#).” Harvard Health Publishing at Harvard Medical School (blog), August 15, 2022.

¹³ Ibid.

¹⁴ See CORE’s REIAs on [B24-0894](#), “Whitman-Walker Entities at St. Elizabeths Tax Rebate Amendment Act of 2022,” [B24-0726](#), “Enhancing Reproductive Health Protections Amendment Act of 2022,” [B24-0808](#), “Human Rights Sanctuary Amendment Act of 2022,” and [B24-0830](#), “Protecting Health Professionals Providing Reproductive Health Care Amendment Act of 2022.”

¹⁵ Warraich, Haider. “[Opioid Addiction and Overdoses Are Increasingly Harming Black Communities](#).” Harvard Health Publishing at Harvard Medical School (blog), August 15, 2022.

¹⁶ CORE has written extensively on the racial wealth gap. For further discussion, see The MITRE Corporation. “[The Racial Wealth Gap in Washington, D.C.](#)” The MITRE Corporation, December 2021.

¹⁷ Darolia, Rajeev, and John Tyler. “[The Opioid Crisis and Community-Level Spillovers onto Children’s Education](#).” Brookings, April 13, 2020.

THE OPIOID ABATEMENT FUND

In current law, there is an Opioid Abatement Fund, in which money from case settlements between the District Government and pharmaceutical companies related to the opioid epidemic are deposited. The law does not specify how the fund will be used.¹⁸

This bill fills the gap in current law. Within 30 days of the final settlement, the Office of the Attorney General (OAG) will transfer the money from these cases to the Opioid Abatement Fund. For payments made before October 1, 2022, at least 85 percent of the money from the settlements must be transferred into the Opioid Abatement Fund. After that date, at least 90 percent of the money received must go to the Opioid Abatement Fund. Any remaining money that has not been transferred can be transferred into the Litigation Support Fund.¹⁹

The bill outlines what the money in the Fund can be used for (related to opioid use disorder and co-occurring substance use and mental health disorders):

- Commission and Office activities and operations, including staff
- District-wide needs assessments
- awards and grants for evidence-based and evidence-informed activities, which might include evidence-informed pilot-programs or demonstration studies
- infrastructure for evidence-based and evidence-informed activities (like required staff, buildings, or equipment)
- evaluations of effectiveness for activities that received money from the Fund (like the impact on access to harm reduction services, or reduction in drug-related mortality)
- publicly available data interfaces, which could be used to aggregate, track, and report:
 - data on opioid use disorder and co-occurring substance use and mental health disorders, overdoses, and drug-related harms
 - outcomes of activities that received money from the Fund
- audit results (the Office of the District of Columbia Auditor will audit the Fund every 5 years)
- any other opioid abatement activities that were authorized by any settlement that resulted in money deposited into the Fund.

The Fund's spending will supplement, but cannot replace, funding that a person or organization might receive from other funds, like insurance benefits or District or federal funding, for the above purposes.

The Department of Behavioral Health will provide a report to the Mayor, Council, and OAG detailing the use of the Fund, which will:

- be published on the Office of Opioid Abatement's website
- include:
 - balances of the Fund
 - accounting descriptions
 - inventory of Fund investments
 - income earned by the Fund
 - all the applications received for awards and grants

¹⁸ For a full list of the relevant cases, see [Opioid Abatement Fund](#), Pub. L. No. 24-167, § 1-325.441 Code of the District of Columbia (2022).

¹⁹ Under current law, there is a Litigation Support Fund, administered by the Office of the Attorney General (OAG). This fund collects revenue from claims or litigation by the OAG on behalf of the District and is used to support expenses associated with litigation on behalf of the District, staff costs (up to \$6 million per year), and crime reduction and violence interruption programming.

- names and descriptions of each awardee or grantee, and amount of funding disbursed
- a description of the intended use of each award or grant and measures for assessing impact
- primary criteria for selection of each awardee or grantee
- whether the Fund supplemented and did not replace existing or future local, state, or federal government funding
- progress toward achieving the Commission, Office, and Fund’s purposes, like metrics on improving outcomes and reducing mortality and harms.

In addition to the cases listed in current law, the bill adds an additional case from which settlement money would be deposited into the Fund: *In re Mallinckrodt PLC*, No. 20-BK-12522 (Bankr. D. Del.).²⁰

Racial Equity Impacts

Bill 24-0952’s provisions on the Opioid Abatement Fund has an inconclusive impact on Black residents, Indigenous residents, and other residents of color. It is positive that the bill specifies the uses of the fund, which includes evidence-based and evidence-informed activities to support those affected by the opioid epidemic. In addition, it is positive that money from the fund cannot replace funding that someone might receive from other sources, like insurance. As Black District residents have been disproportionately impacted by the opioid epidemic, it is likely that they will receive support from this Fund. However, the impact of this provision will depend on implementation by the Commission and the Office and the organizations and individuals selected to provide services.

Further Considerations

This provision does not require data collection disaggregated by race. CORE has written extensively on the importance of collecting data disaggregated by race. Because the opioid epidemic has had such a substantial impact on Black communities, it is critical that the Fund intentionally identify these racial inequities to address them.

OPIOID ABATEMENT ADVISORY COMMISSION

Bill 24-0952 establishes the Opioid Abatement Advisory Commission, which will ensure that the money the District receives and deposits into the Opioid Abatement Fund is appropriately and effectively spent on evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment for opioid use disorder and co-occurring substance use and mental health disorders.

The Commission will also “prioritize and facilitate public involvement and accountability in accounting” for this spending. There will be 21 members of the Commission, one of whom will be elected chair by the other members (See Appendix for the full list of members). Notably, three members will have lived experience with opioid use. Two of the members will be someone who has experience with opioid use or co-occurring substance use or mental health disorders. One member will be a person who is family of someone with opioid use disorder or co-occurring substance use or mental health disorders.

The bill outlines the amount of time for each member’s appointment, for a maximum of two full terms each. The Commission will be required to hold quarterly public meetings.

The Commission will provide recommendations to the Mayor and Council on:

- District-wide goals and performance indicators related to:
 - prevention, recovery, treatment, and harm reduction for opioid use disorder and co-occurring substance and mental health disorders

²⁰ There is no publicly accessible website link to the case as of the writing of this REIA.

- reducing disparities in access to prevention, recovery, treatment, and harm reduction services and programs
- improving outcomes and reducing mortality in traditionally underserved populations, including for communities of color and current or formerly incarcerated individuals, as it relates to prevention, recovery, treatment, and harm reduction
- principles, policies, and procedures for:
 - awarding money and grants from the Fund
 - performance and outcomes of grantees
 - management of the Fund
 - any changes to the Fund’s purposes.

The bill requires the Commission to consider the following in awarding money and grants:

- the number of people with an opioid use disorder per capita, and the number of overdose deaths per capita, in the geographic area where a prospective awardee or grantee seeks to serve
- disparities in access to care and health outcomes in the area which a prospective awardee or grantee seeks to serve
- the existing activities and programs in the geographic area the prospective awardee or grantee seeks to serve.

Racial Equity Impacts

Bill 24-0952’s provisions establishing the Opioid Abatement Advisory Commission will likely improve health outcomes for Black District residents. Black District residents are disproportionately affected by the racially inequitable impact, access to treatment, and stigma of opioid use, substance use disorder, and co-morbid mental health conditions. The bill specifically requires the Commission to identify goals and performance indicators to improve outcomes for prevention, recovery, treatment, and harm reduction for “communities of color and current or formerly incarcerated individuals.” Naming communities of color is critical, and as the Commission sets the guidelines for the Fund’s use and Office for Opioid Abatement’s operations, that sets this section apart from the others in this bill.

As Colleen Grablick writes for the DCist:

Research shows that criminalizing drug use leads to cultural stigma and decreases public support for policies aimed at solving the opioid crisis, by placing blame for drug use on the individual rather than the social factors like poverty, structural racism, and poor public health infrastructure...Beyond the trauma of an arrest, involvement with the criminal justice system impacts an individual’s ability to find stable housing and employment. Unstable housing makes people more likely to continue using and puts them at a higher risk of an overdose. Studies also show that incarcerated residents, if not treated adequately for substance-use while incarcerated, often return to similar levels of use after release.²¹

²¹ Grablick, Colleen. “[Racial Disparities In D.C.’s Opioid Arrests Underscore Need For Decriminalization, Advocates Say.](#)” DCist. August 29, 2022.

Black residents are disproportionately incarcerated in the District, making up 92 percent of the population of the Department of Corrections (DOC), despite making up only 46.5 percent of the District's population.²² In comparison, white people make up only 3.62 percent of those incarcerated at DOC.^{23,24}

In addition, the Commission's mandate includes identifying disparities in access to services and programs. Given that the opioid epidemic's disproportionate impact on Black communities in the District is linked in large part to racially inequitable disparities in the impact of the COVID-19 pandemic, access to healthcare, and medical treatment leading to worse health outcomes, this will likely improve health outcomes for Black residents who may be struggling with opioid and substance use and addiction.

Positively, the bill requires members of the Commission to have lived experience with opioid use or substance use disorders. By mandating the inclusion of one representative who has experienced opioid use, and one representative who is a family member of someone who has experienced opioid use, this bill ensures that the Commission is incorporating lived experience into their decision-making process.

Further Considerations

There may be unintentional, negative impacts of labeling areas of the District as “hotspots” for opioid use, including increased policing. Outreach advocates have reported that after overdoses are reported, “policing typically increasing in the surrounding areas.”²⁵ When there are two or more overdoses in a two-block radius, the Department of Behavioral Health labels the areas as “hot spots,” resulting in an increase in police presence.²⁶ According to DCist, “this increased police presence contributes to fear and intimidation that can make it difficult for workers like Sullivan to get resources to those who need them.”²⁷ As Black District residents experience greater policing, surveillance, and arrests, this labelling may limit the legislation's positive impacts, and negatively affect the Commission's intended goals.

The bill does not detail the mechanism by which they will ensure public involvement and accountability in Fund spending. While it is positive that there will be members on the Commission with direct lived experience with opioid use and its impacts, the experiences of communities are diverse—one or two people cannot speak for the broad experiences of a community. The Commission should take caution and consider how to avoid tokenizing their members. According to the Britannica Dictionary, tokenism is “the practice of doing something (such as hiring a person who belongs to a minority group) only to prevent criticism and give the appearance that people are being treated fairly.”²⁸

“Criminalizing drug use leads to cultural stigma and decreases public support for policies aimed at solving the opioid crisis, by placing blame for drug use on the individual rather than social factors like poverty, structural racism, and poor public health infrastructure.”

Colleen Grablick
DCist

²² DC Department of Corrections. “[DC Department of Corrections Facts and Figures](#)” July 2022.

²³ Ibid.

²⁴ For more details on the mass incarceration of Black District residents, see CORE's REIA on [B24-0416](#), “Revised Criminal Code Act of 2022.”

²⁵ Grablick, Colleen. “[Racial Disparities In D.C.'s Opioid Arrests Underscore Need For Decriminalization, Advocates Say](#).” DCist. August 29, 2022.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Britannica Dictionary. “[Tokenism](#).”

The Commission must ask itself: *how will it critically and effectively engage stakeholders in the communities they are trying to serve?*

The efficacy of the Stakeholder Commission will depend on the Commission’s relationship to the Office of Opioid Abatement, the Office’s efficacy to implement the identified goals, and vice versa. The extent of the bill’s impact on Black residents, Indigenous residents, and other residents of color will depend on the efficacy of these entities implementing the bill.

The bill does not provide compensation for Commission members, which may limit the ability of people with lived experience with the opioid epidemic to participate. In DC, the median Black household has \$3,500 in wealth and the median white household has roughly \$285,000—81 times more than the Black household.²⁹ Similarly, the median Black household earns roughly \$50,000 compared to the median white household who earns \$150,000.³⁰ This is due to many structural factors, including enslavement, barring Black residents from well-paying jobs, targeting Black neighborhoods for “urban renewal,” racially segregating housing through redlining, and excluding Black residents from banking services.³¹

Volunteer work without compensation can limit the pool of Black residents, Indigenous residents, and other people of color who can participate.³² This is especially true for people with lower incomes, and Black households in DC are overrepresented in low-income brackets.³³ People who have been incarcerated—in the District, Black people are disproportionately incarcerated—face barriers to employment, which also negative impacts income.

Given the history of oppression, exclusion, and unpaid labor of Black residents and other residents of color,³⁴ the bill’s exclusion of compensation for the people with experience with the opioid epidemic may limit their participation.

Surveys show that volunteers prefer stipends as form of compensation.³⁵ But other forms of compensation can also benefit volunteers, such as covering transportation costs, meals, childcare, or other necessities. The goal should be to compensate the time, expertise, efforts, and emotional energy of Black people and other people of color, particularly if they have lower incomes.³⁶

OFFICE OF OPIOID ABATEMENT

Bill 24-0952 establishes an Office of Opioid Abatement within the Department of Behavioral Health.

The Office will be led by a Director who has at least 10 years of professional experience in prevention, recovery, treatment, and harm reduction. The Office will have the following responsibilities:

- conduct a District-wide needs assessment identifying structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders
- support the Commission’s activities with staffing, research, policy expertise, facilities, technical assistance, and other resources

²⁹ “[The Racial Wealth Gap in Washington, D.C.](#)” MITRE and Council Office of Racial Equity, December 2021.

³⁰ [Table S1903: Median Income in the Past 12 Months](#). American Community Survey, 2019 1-Year estimates.

³¹ Kijakazi, Kilolo. “[The Color of Wealth in the Nation’s Capital](#).” Urban Institute, November 2016.

³² Joyslin, Lisa. “[Co-Creating Racial Equity in Volunteer Engagement](#).” Minnesota Alliance for Volunteer Advancement, 2021.

³³ D.C. Policy Center and Council Office of Racial Equity. “[DC Racial Equity Profile for Economic Outcomes](#).”

³⁴ Crawford, Doni. “[Black Workers Matter](#).” DC Fiscal Policy Institute, January 28, 2020.

³⁵ Joyslin, Lisa. “[Co-Creating Racial Equity in Volunteer Engagement](#).” Minnesota Alliance for Volunteer Advancement, 2021.

³⁶ Rodríguez, Sonia Torres, Mikaela Tajo, Shamoia Washington, and Kimberly Burrowes. “[Changing Power Dynamics among Researchers, Local Governments, and Community Members](#).” Urban Institute, June 2022.

- assist the Commission in preparing recommendations regarding goals and indicators
- integrating the work of the Office, Commission, and Fund with existing District planning
- develop principles, policies, and procedures for the Fund’s money and grants based on the Commission’s recommendations
- oversee the Fund’s spending
- issue, manage, and oversee the Fund’s awards and grants, which might include collecting and publicly reporting data from awardees and grantees on the effectiveness of their activities
- prepare an annual report
- create and maintain a public website that includes
 - Commission meeting minutes
 - the developed governing principles, policies, and procedures
 - quarterly accountings of the Fund
 - a list of the Fund’s awards and grants, including awardee and grantee data
 - annual reports.

If the Office does not follow a Commission recommendation, the Office is required to provide the Commission with a written explanation of its decision. The Commission will have at least seven days to provide a written response before the Office proceeds with its decision.

Racial Equity Impacts

The creation of the Office of Opioid Abatement will have an inconclusive impact on Black residents, Indigenous residents, and other residents of color. The efficacy and impact of the Office will depend on the Director selected and Commission’s efficacy in oversight, as it will set out the principles, policies, and procedures for the Office’s work. In addition, it is positive that the bill requires a District-wide needs assessment to identify “structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders.” However, CORE cannot conclusively determine the impact of these yet-to-be-implemented plans.

Further Considerations

This provision does not require data collection disaggregated by race. CORE has written extensively on the importance of collecting data disaggregated by race. Because the opioid epidemic has had such a substantial impact on Black communities, it is critical that the Office intentionally identify these racial inequities to address them.

FURTHER CONSIDERATIONS FOR THE BILL

The bill does not address the criminalization of drug and substance abuse as an exacerbating factor to racial disparities in the opioid epidemic. Research shows that treating drug use as a crime rather than a public health issue disproportionately harms Black people and other communities of color.³⁷ In addition, incarceration leads to a greater risk of drug overdose after release.³⁸ Criminalization is a vicious cycle—one

³⁷ Volkow, Nora. “[Addiction Should Be Treated, Not Penalized](#).” NIH: National Institute on Drug Abuse (blog), May 7, 2021.

³⁸ Ibid.

that exacerbates racial inequity; reinforces barriers to accessing treatment, wealth-building, and education; and (re-)traumatizes people who have experience with drug use and substance use disorders.³⁹

Racial inequities also exist when it comes to enforcement. Nationally, Black people have similar rates in opioid use to white people. However, Black District residents are arrested at disproportionately higher rates, seven times more often than white residents for opioid-related offenses.^{40,41}

James Sullivan, an overdose prevention specialist with HIPS (a District organization that serves sex workers, people who use drugs, and residents experiencing homelessness) had previous experience with racially inequitable policing as someone who formerly used drugs:

I was only ever just given a slap on the wrist. The [police] would come at it like, ‘oh you’re too smart for this, you shouldn’t be caught up in this, we don’t want to ruin your life by arresting you,’” Sullivan recalls. “Whereas all of the Black and brown people who I was ever arrested with ended up thrown in jail or charged with something ridiculous, and of course, as soon as you get one charge, then it just keeps making it harder and harder in the future.”⁴²

Take the case of the City of Baltimore, which stopped prosecuting drug possession (among other low-level charges) in 2020 to mitigate the spread of COVID.⁴³ The number of incarcerated people decreased by 20 percent after pending cases were dismissed.⁴⁴ When the change was made permanent, a study from Johns Hopkins University found that between April 2020 and May 2021, 443 drug and paraphernalia possession charges were avoided, and 78 percent of those cases involved Black people.⁴⁵ During that time, 911 calls for drug-related offenses also decreased, and less than one percent of people who had their charges dropped were arrested again for a more serious charge.⁴⁶

As senior author of the paper, Susan Sherman, PhD, MPH shared, “many people who were prosecuted for these low-level drug and prostitution offenses have unmet health needs and a long history of trauma, necessitating responses other than arrest and incarceration.”⁴⁷

“Many people who were prosecuted for these low-level drug and prostitution offenses have unmet health needs and a long history of trauma, necessitating responses other than arrest and incarceration.”

Susan Sherman, PhD, MPH
Bloomberg School of Public Health
at Johns Hopkins

³⁹ Ibid.

⁴⁰ SAMHSA, Center for Behavioral Health Statistics and Quality. “[Results from the 2020 National Survey on Drug Use and Health: Detailed Tables](#).” Substance Abuse and Mental Health Services Administration, 2020.

⁴¹ Grablick, Colleen. “[Racial Disparities In D.C.’s Opioid Arrests Underscore Need For Decriminalization, Advocates Say](#).” DCist. August 29, 2022.

⁴² Ibid..

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Johns Hopkins Bloomberg School of Public Health. “[Baltimore’s No-Prosecution Policy for Low-Level Drug Possession and Prostitution Finds Almost No Rearrests for Serious Offenses](#),” October 19, 2021 via Grablick, Colleen. “[Racial Disparities In D.C.’s Opioid Arrests Underscore Need For Decriminalization, Advocates Say](#).” DCist. August 29, 2022.

⁴⁶ Ibid.

⁴⁷ Ibid.

ASSESSMENT LIMITATIONS

Alongside the analysis provided above, the Council Office of Racial Equity encourages readers to keep the following limitations in mind:

We generally do not provide policy solutions or alternatives to address our racial equity concerns.

While Council Period 24 Rules allow our office to make policy recommendations, we focus on our role as policy analysts—we are not elected policymakers or committee staff. In addition, and more importantly, racially equitable policymaking takes time. Because we only have ten days for our review, we would need more time to ensure comprehensive research and thorough community engagement inform our recommendations.

Assessing legislation’s potential racial equity impacts is a rigorous, analytical, and organized undertaking—but it is also an exercise with constraints. It is impossible for anyone to predict the future, implementation does not always match the intent of the law, critical data may be unavailable, and today’s circumstances may change tomorrow. Our assessment is our most educated and critical hypothesis of the bill’s racial equity impacts.

Regardless of the Council Office of Racial Equity’s final assessment, the legislation can still pass. This assessment intends to inform the public, Councilmembers, and Council staff about the legislation through a racial equity lens. However, a REIA is not binding.

This assessment aims to be accurate and useful, but omissions may exist. Given the density of racial equity issues, it is unlikely that we will raise *all* relevant racial equity issues present in a bill. In addition, an omission from our assessment should not: 1) be interpreted as a provision having no racial equity impact or 2) invalidate another party’s racial equity concern.

APPENDIX

OPIOID ABATEMENT ADVISORY COMMISSION MEMBERS

Bill 24-0952 requires the Opioid Advisory Commission to include the following members:

- the following representatives or their designee:
 - the Director of the Department of Behavioral Health
 - Director of the Department of Health
 - Deputy Mayor for Health and Human Services
 - Deputy Mayor for Public Safety and Justice
 - Chief Medical Examiner
 - Attorney General
 - Chairperson of the Council's Committee on Health
- five members appointed by the Mayor with the following qualifications:
 - one member with experience providing prevention, recovery, treatment, or harm reduction services
 - two members with professional expertise and educational backgrounds in medicine and mental health services, respectively
 - one member who has experienced opioid use disorder and co-occurring substance use and mental health disorders and recovery
 - one family member of a person or decedent (person who has died) who experienced opioid use disorder and co-occurring substance use and mental health disorders
- one representative each from:
 - DC Behavioral Health Association
 - Medical Society of DC
 - DC Primary Care Association
 - DC Hospital Association
- four members appointed by the Council with the following qualifications:
 - two members with current experience as direct service providers of prevention, recovery, treatment, or harm reduction services
 - one member with professional expertise and an educational background in public health policy or research
 - one member who has experienced opioid use disorder and co-occurring substance use and mental health disorders and recovery.

ATTACHMENT G



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Charles Allen

FROM: Nicole L. Streeter, General Counsel *NLS/DPG*

DATE: November 21, 2022

**RE: Legal sufficiency determination for Bill 24-952, the
Opioid Litigation Proceeds Amendment Act of 2022**

The measure is legally and technically sufficient for Council consideration.

The bill would:

- Establish an Opioid Abatement Advisory Commission to make recommendations to the Mayor and Council regarding the use of opioid litigation settlement proceeds and District-wide goals, objectives, and performance indicators relating to opioid use disorder and co-occurring substance use and mental health disorders; and
- Establish an Office of Opioid Abatement and set forth its powers and duties.

The bill would also amend:

- The Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to make conforming changes; and
- The Opioid Abatement Fund Establishment Act of 2022 to clarify the monies to be deposited into the Opioid Abatement Fund, provide for how monies in the Opioid Abatement Fund shall be spent, require an annual report to the Mayor, Council, and Attorney General concerning opioid abatement activities and the use of monies deposited into the Opioid Abatement Fund, and require an audit of the Opioid Abatement Fund.

I am available if you have any questions.

ATTACHMENT H

Comparative Committee Print
B24-0952
Committee on the Judiciary & Public Safety
November 22, 2022

1 **Section 2. Definitions.**
2

3 For the purposes of this act, the term:

4 (1) “Commission” means the Opioid Abatement Advisory Commission
5 established by section 3.

6 (2) “Evidence-based” means that an activity, practice, program, service,
7 support, or strategy has undergone multiple randomized controlled trials and observational
8 studies demonstrating that it helps individuals avoid the development and progression of
9 opioid and other substance use disorders or drug-related harms, reduces the adverse
10 consequences of opioid and other substance use, or manages, slows the progression of, or
11 supports recovery from an opioid use disorder or co-occurring substance use or mental
12 health disorder.

13 (3) “Evidence-informed” means an activity, practice, program, service,
14 support, or strategy that incorporates the best available evidence, patient needs, values, and
15 preferences, and practitioner expertise into the decision-making process.

16 (4) “Fund” means the Opioid Abatement Fund established by section 5012
17 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022
18 (D.C. Law 24-167; D.C. Official Code § 1-325.441).

19 (5) “Harm reduction” means an activity, practice, program, service, support,
20 or strategy that addresses both conditions that precede and occur as a result of substance
21 use and attempts to reduce the adverse consequences of opioid and other substance use
22 among persons who continue to use those substances.

23 (6) “Infrastructure” means the resources, such as personnel, buildings, or
24 equipment, required for the District or another entity to provide evidence-based and
25 evidence-informed harm reduction, prevention, recovery, and treatment activities,
26 practices, programs, services, supports, and strategies to individuals with opioid use
27 disorder and co-occurring substance use and mental health disorders.

28 (7) “Office” means the Office of Opioid Abatement established by section
29 4.

30 (8) “Prevention” means primary, secondary, and tertiary efforts to help
31 individuals avoid the development and progression of opioid use disorder and co-occurring
32 substance use and mental health disorders and drug-related harms.

33 (9) “Recovery” means a process through which an individual develops a
34 healthier life, which may include:

35 (A) Improving the individual’s quality of life, including the
36 individual’s physical and mental health;

37 (B) The individual’s consistent pursuit of abstinence from the
38 substances or behaviors that have negatively impacted them, their family, and their
39 community;

40 (C) Relief of the individual's symptoms, including substance
41 craving; and

42 (D) Improvement of the individual's relationships, social
43 connectedness, and interpersonal skills.

44 (10) "Treatment":

45 (A) Means an evidence-based or evidence-informed activity,
46 practice, program, service, support, or strategy to intervene upon, care for, manage, slow
47 the progression of, or support recovery from opioid use disorder or co-occurring substance
48 use or mental health disorders;

49 (B) Shall be individualized to address each individual's medical
50 needs; and

51 (C) Shall include screening for and diagnosis of substance use
52 disorders or co-occurring mental or physical health disorders, as well as pharmacological
53 and non-pharmacological therapeutic interventions for opioid use disorder or co-occurring
54 substance use or mental health disorders.

55 **Section 3. Opioid Abatement Advisory Commission.**

56 (a) There is established an Opioid Abatement Advisory Commission.

57 (b) The purpose of the Commission shall be to:

58 (1) Ensure that the monies the District receives and deposits into the Fund
59 are appropriately expended on evidence-based and evidence-informed harm reduction,
60 prevention, recovery, and treatment activities, practices, programs, services, supports, and
61 strategies for opioid use disorder and co-occurring substance use and mental health
62 disorders;

63 (2) Prioritize and facilitate public involvement, accountability, and
64 transparency in allocating and accounting for these monies; and

65 (3) Ensure that the monies the District receives and deposits into the Fund
66 have the effect of preventing, treating, and reducing opioid use disorder and co-occurring
67 substance use and mental health disorders and reducing fatalities.

68 (c) The Commission shall be composed of 21 members, as follows:

69 (1) The Director of the Department of Behavioral Health, or the Director's
70 designee;

71 (2) The Director of the Department of Health, or the Director's designee;

72 (3) The Director of the Department of Health Care Finance, or the Director's
73 designee;

74 (4) The Deputy Mayor for Health and Human Services, or the Deputy
75 Mayor's designee;

76 (5) The Deputy Mayor for Public Safety and Justice, or the Deputy Mayor's
77 designee;

78 (6) The Chief Medical Examiner, or the Chief Medical Examiner's
79 designee;

80 (7) The Attorney General, or the Attorney General's designee;

81 (8) The Chairperson Council committee with jurisdiction over health
82 matters, or the Chairperson's designee;

85 (9) Five members appointed by the Mayor, with the following
86 qualifications:

87 (A) One member with experience in providing prevention, recovery,
88 treatment, or harm reduction services for opioid use disorder and co-occurring substance
89 use and mental health disorders;

90 (B) Two members with professional expertise and educational
91 backgrounds, respectively, in:

92 (i) Medicine; and

93 (ii) Mental health services;

94 (C) One member who has experienced opioid use disorder and co-
95 occurring substance use and mental health disorders and recovery; and

96 (D) One family member of a person or decedent who experienced
97 opioid use disorder and co-occurring substance use and mental health disorders;

98 (10) One representative each from the:

99 (A) D.C. Behavioral Health Association;

100 (B) Medical Society of D.C.;

101 (C) D.C. Primary Care Association; and

102 (D) D.C. Hospital Association; and

103 (11) Four members appointed by the Chairman of the Council, with the
104 following qualifications:

105 (A) Two members with current experience as direct service
106 providers of prevention, recovery, treatment, or harm reduction services for opioid use
107 disorder and co-occurring substance use and mental health disorders;

108 (B) One member with professional expertise and an educational
109 background in public health policy or research; and

110 (C) One member who has experienced opioid use disorder and co-
111 occurring substance use and mental health disorders and recovery.

112 (d) The Commission shall elect a Chair from among its members.

113 (e)(1) Each member appointed pursuant to subsection (c)(9) and (11) of this section
114 shall serve a 3-year term; except, that:

115 (A) Of the Mayor's initial appointments, 2 members shall be
116 appointed for terms of one year, and 2 members shall be appointed for terms of 2 years;
117 and

118 (B) Of the Council's initial appointments, one member shall be
119 appointed for a term of one year, and 2 members shall be appointed for terms of 2 years.

120 (2) Members shall serve:

121 (A) Following the expiration of their terms until their successors
122 have been appointed;

123 (B) For a maximum of 2 full terms, with partial term service not
124 counted toward this maximum; and

125 (C) Without compensation; provided, that they shall be reimbursed
126 for necessary expenses incurred in carrying out Commission duties.

127 (3) Vacancies shall be filled in the same manner as the original appointment
128 for the remainder of the term.

129 (f) The Commission shall hold public meetings at least quarterly, with meetings
130 called by the Chair or a majority of Commission members. All Commission meetings shall

be subject to the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*).

(g) A majority of the Commission's members shall constitute a quorum, and actions of the Commission shall be taken by an affirmative vote of a majority of the members in attendance at a meeting where a quorum is present. Members may attend in person or remotely through audio or audiovisual means.

(h) The Commission shall have the following powers and duties:

(1) Establish procedures for the Commission's operations; and

(2) Make recommendations to the Mayor and Council regarding:

(A) District-wide goals, objectives, and performance indicators relating to:

(i) Prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

(ii) Reducing disparities in access to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies; and

(iii) Improving outcomes and reducing mortality in traditionally underserved populations, including for communities of color and current or formerly incarcerated individuals, with regard to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies;

(B) Governing principles, policies, and procedures for the application for and awarding of monies and grants from the Fund;

(C) Awards of monies and grants from the Fund;

(D) The performance and outcomes of Fund awardees and grantees;

(E) Management of the Fund; and

(F) Any changes to the Fund's purposes.

(i) The Commission's recommendations for the awarding of monies and grants pursuant to subsection (h)(2)(C) of this section shall include the consideration of the following:

(1) The number of individuals, per capita, with an opioid use disorder, and the number of overdose deaths per capita, in the area which a prospective awardee or grantee seeks to serve;

(2) Disparities in access to care and health outcomes in the area which a prospective awardee or grantee seeks to serve; and

(3) The infrastructure, activities, practices, programs, services, supports, and strategies currently available to individuals with an opioid use disorder in an area which a prospective awardee or grantee seeks to serve.

Section 4. Office of Opioid Abatement.

(a)(1) There is established, within the Department of Behavioral Health, an Office of Opioid Abatement.

(2) The Office shall be led by a Director with at least 10 years' professional experience and education in prevention, recovery, treatment, and harm reduction efforts for opioid use disorder and co-occurring substance use and mental health disorders.

(b) The Office shall have the following powers and duties:

- (1) Conducting a District-wide needs assessment to identify structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders;
- (2) Supporting the Commission’s activities by providing staffing, research and policy expertise, facilities, technical assistance, and other resources;
- (3) Assisting the Commission in preparing its recommendations regarding goals, objectives, and performance indicators pursuant to section 3(h)(2)(A);
- (4) Integrating the work of the Office and Commission and Fund expenditures with existing District strategic planning related to opioid use disorder and co-occurring substance use and mental health disorders;
- (5) Developing governing principles, policies, and procedures for the application and awarding of monies and grants from the Fund;
- (6) Overseeing expenditures from the Fund, including by preparing a quarterly accounting of expenditures from the Fund and the Fund balance;
- (7) Issuing, managing, and overseeing awards and grants from the Fund, including collecting and publicly reporting data from awardees and grantees concerning the effectiveness of infrastructure, activities, practices, programs, services, supports, and strategies funded; and
- (8) Preparing the annual report required by section 5012(f) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(f)); and
- (9) Creating and maintaining a public website that includes:
 - (A) Commission meeting attendance, agendas, and minutes;
 - (B) The governing principles, policies, and procedures developed pursuant to paragraph (5) of this subsection;
 - (C) The quarterly accountings of Fund expenditures and Fund balance prepared pursuant to paragraph (6) of this subsection;
 - (D) A listing of awards and grants from the Fund and awardee and grantee data collected pursuant to paragraph (7) of this subsection; and
 - (E) The annual reports prepared pursuant to section 5012(f) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(f)).

(c) If the Office decides not to follow a Commission recommendation in whole or in part, the Office shall provide the Commission with a written explanation for its decision within 14 days after the decision is made. The Commission shall have at least 7 days after receipt of the Office’s written explanation to provide a written response before the Office proceeds with its decision.

Section 5. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), may issue rules to implement the provisions of this act.

221 **Section 6**

222
223 **D.C. Official Code § 1–301.86b. Litigation Support Fund.**

224
225 (a) There is established as a special fund the Litigation Support Fund (“Fund”),
226 which shall be administered by the Office of the Attorney General in accordance with this
227 section.

228 (b) Revenue from the following sources shall be deposited into the Fund:
229 (1) Subject to the limitations of subsection (d)(3) of this section and
230 notwithstanding any other provision of District law, any recoveries from claims or
231 litigation brought by the Office of the Attorney General on behalf of the District shall be
232 deposited into the Fund;

233 (2) Funds collected pursuant to § 1-350.02(a-4)(1); ~~and~~
234 (3) Funds recovered from owners under § 42-3651.06(j)(2), and not
235 deposited into the Tenant Receivership Abatement Fund, in accordance with § 1-
236 301.86e(b)(1)(B); and

237 (4) Subject to the limitations of subsection (d)(3)(D) of this section, funds
238 received pursuant to section 5012(b)(1) and (1A) of the Opioid Abatement Fund
239 Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official
240 Code § 1-325.441(b)(1), (1A)).

241 (c)(1) Money in the Fund shall be used for the following purposes:
242 (A) Supporting general litigation expenses associated with
243 prosecuting or defending litigation matters on behalf of the District of Columbia;
244 (B) Funding staff positions, personnel costs, and employee
245 retirement and separation incentives, up to a maximum amount of \$6 million per year, and
246 non-personnel costs related to administering any grant issued pursuant to the authority
247 provided in §§ 1-301.88f(a) and § 1-301.88g(a); and

248 (C) Crime reduction and violence interruption programming.
249 (2) Beginning in Fiscal Year 2020, up to \$7 million deposited into the Fund
250 each fiscal year may be used for the purposes of crime reduction, violence interruption,
251 and other public safety initiatives.

252 (3) In Fiscal Year 2021, the first \$500,000 deposited into the Fund shall be
253 transferred to the Office of Victim Services and Justice Grants for victim services grants.

254 (c-1) Repealed.

255 (d)(1) Except as provided in paragraph (3) of this subsection, the money deposited
256 into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the
257 General Fund of the District of Columbia at the end of any fiscal year or at any other time.

258 (2) Subject to authorization in an approved budget and financial plan, any
259 funds appropriated in the Fund shall be continually available without regard to fiscal year
260 limitation.

261 (3)(A) The balance in the Fund, including interest earned, shall not exceed
262 \$19 million. Any funds in excess of \$19 million shall revert at the end of a fiscal year to
263 the unrestricted fund balance of the General Fund of the District of Columbia.

264 (B) Repealed.

265 (C) Notwithstanding subparagraph (A) of this subsection, recoveries
266 obtained on behalf of the District pursuant to contingency fee contracts shall be deposited

into the Fund and may remain in the Fund until paid to the contractor to satisfy costs and fees or transferred to another fund by the Office of the Attorney General to pay contingency fee contracts.

~~(D)(i) Notwithstanding subparagraph (A) of this subsection, the Attorney General may transfer into the Opioid Abatement Fund, established pursuant to § 1-325.441, a portion of funds received prior to October 1, 2022, in settlement of the cases listed in § 1-325.441(b)(1) and deposited into the Fund.~~

~~(ii) The Attorney General shall exercise this discretion in accordance with all applicable settlement terms, including terms specifying the amount of funds that must be spent on care, treatment, and other programs designed to address the misuse and abuse of opioid products, treat or mitigate opioid use or related disorders, or mitigate other effects of the opioid epidemic.~~

(D) The Attorney General shall transfer to the Opioid Abatement Fund, established by section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), at least 85% of any payment received prior to October 1, 2022, in settlement of the cases and settlements, judgments, and consent decrees specified in section 5012(b)(1) and (1A) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(b)(1), (1A)), that was deposited into the Fund, and at least 90% of any payment received thereafter. The Attorney General may elect to retain the remainder of each such payment in the Fund by providing the Mayor, Chief Financial Officer, and Council with written notice of the amount of the election and the relevant payment. In making this election, the Attorney General shall ensure compliance with all applicable settlement terms.

(e) For the purposes of this section, the term "recovery" shall include funds obtained through court determinations or through the settlement of claims in which the Office of the Attorney General represents the District, but shall not include funds obtained through an administrative proceeding or funds obligated to another source by federal law or pursuant to § 1-325.391(b)(2) or § 1-623.32. Recoveries shall be deposited into the Fund regardless of whether the amounts payable to satisfy the underlying obligations otherwise would have been required to be deposited into a different District special fund.

(f) Notwithstanding any other provision of this section, \$12,039,659.91 of the amount to be received by the District in Fiscal Year 2021 in settlement of District of Columbia v. Monsanto Co., Superior Court of the District of Columbia Case No. 2020 CA 002445 B, shall be deposited in the Fund and allocated as follows:

(1) \$7,339,659.91 shall be paid in attorney's fees and costs to May Firm/EKM Association on PCBs for legal services received pursuant to Contract No. DCCB-2019-C-0008; and

(2) \$4,700,000 shall be used for the authorized purposes of the Fund pursuant to subsection (c) of this section.

307 **Section 7**

308
309 **D.C. Official Code § 1–325.441. Opioid Abatement Fund.**

310
311 (a) There is established as a special fund the Opioid Abatement Fund ("Fund"),
312 which shall be administered by the ~~Mayor~~ Department of Behavioral Health in accordance
313 with this section.

314 (b) Monies from the following sources shall be deposited into the Fund:
315 (1) Funds received by the District, regardless of whether such funds are
316 received as a lump sum or series of payments to be made over time, ~~in settlement of D.C.~~
317 ~~Superior Court cases pursuant to the settlement and trust-distribution agreements entered~~
318 in the following cases:

319 (A) *District of Columbia v. Johnson & Johnson, et al., Case No.*
320 *2022-CA-001441-B (D.C. Super. Ct.);*

321 (B) *District of Columbia v. McKesson Cop, et al., Case No. 2022-*
322 *CA-001401-B (D.C. Super Ct.); and*

323 (C) *District of Columbia v. McKinsey & Co., Case No. 2021-CA-*
324 *00327-B (D.C. Super. Ct.); and*

325 (D) *In re Mallinckrodt PLC, No. 20-BK-12522 (Bankr. D. Del.);*

326 (1A) Funds received by the District pursuant to any pre- or post-suit
327 settlement, judgment, or consent decree that the Attorney General designates as an opioid-
328 related settlement, judgment, or consent decree; provided, that the Attorney General shall
329 notify the Mayor and Council of any such designation within 30 days after the settlement,
330 judgment, or consent decree becoming final; and

331 (2) Monies otherwise appropriated to, or transferred to, the Fund in
332 accordance with law.

333 (b-1) Monies in the Fund shall only be used for the following purposes:

334 (1) Permissible Commission and Office activities and operations, including
335 personnel, pursuant to sections 3 and 4, respectively;

336 (2) District-wide needs assessments to identify structural gaps and needs
337 related to opioid use disorder and co-occurring substance use and mental health disorders;

338 (3) Awards and grants for evidence-based and evidence-informed
339 prevention, recovery, treatment, or harm reduction activities, practices, programs, services,
340 supports, and strategies for opioid use disorder and co-occurring substance use and mental
341 health disorders, including evidence-informed pilot programs or demonstration studies;

342 (4) Infrastructure required for evidence-based and evidence-informed
343 prevention, recovery, treatment, or harm reduction activities, practices, programs, services,
344 supports, and strategies for opioid use disorder and co-occurring substance use and mental
345 health disorders;

346 (5) Evaluations of effectiveness and outcomes for activities, practices,
347 programs, services, supports, and strategies for opioid use disorder and co-occurring
348 substance use and mental health disorders for which monies from the Fund were disbursed,
349 such as impact on access to harm reduction, services, or treatment for disorders, or
350 reduction in drug-related mortality;

351 (6) Publicly available data interfaces, including to aggregate, track, and
352 report;

353 (A) Data on opioid use disorder and co-occurring substance use and
354 mental health disorders, overdoses, and drug-related harms; and

355 (B) Outcomes of activities, practices, programs, services, supports,
356 and strategies for which monies from the Fund were disbursed;

357 (7) The audit required by subsection (g) of this section; and

358 (8) Any other opioid abatement activities authorized by any settlement,
359 judgment, or consent decree resulting in funds being deposited into the Fund.

360 (b-2) Unless otherwise required by court order, monies in the Fund shall be used
361 for prospective purposes and not to reimburse expenditures incurred prior to the effective
362 date of the Opioid Litigation Proceeds Amendment Act of 2022, as approved by the
363 Committee on the Judiciary and Public Safety on November 22, 2022 (Committee print of
364 Bill 24-952).

365 (b-3) Monies expended from the Fund for the purposes set forth in subsection (b-
366 1) of this section shall supplement, and not supplant, any other funds, including insurance
367 benefits or District or federal funding, that would otherwise have been expended for such
368 purposes.

369 (b-4) Expenditures for Commission and Office activities and operations, including
370 personnel, and expenditures for audits shall comply with any applicable terms in the
371 settlement agreements, judgments, or consent decrees that limit the use of funds for
372 administrative expenses.

373 (c) Money deposited into the Fund shall not be obligated or expended until the
374 Council of the District of Columbia passes legislation setting forth the permissible uses of
375 the money in the Fund.

376 (d)(1) Money deposited into the Fund shall not revert to the unassigned fund
377 balance of the General Fund of the District of Columbia at the end of any fiscal year or at
378 any other time.

379 (2) Subject to authorization in an approved budget and financial plan, any
380 funds deposited into the Fund shall be continually available without regard to fiscal year
381 limitation.

382 (e)(1) Notwithstanding subsection (b)(1) and (1A) of this section, the Attorney
383 General may elect to have no more than 15% of any payment the District receives prior to
384 October 1, 2022, pursuant to the settlements, judgments, and consent decrees referenced in
385 subsection (b)(1) and (1A) of this section, retained in the Litigation Support Fund
386 established pursuant to section 106b of the Attorney General for the District of Columbia
387 Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C.
388 Law 21-36; D.C. Official Code § 1-301.86b), and no more than 10% of any payment
389 received thereafter.

390 (2) The Attorney General shall make an election pursuant to paragraph (1)
391 of this subsection by providing the Mayor, Chief Financial Officer, and Council with
392 written notice of the amount of the election and the relevant payment. In making this
393 election, the Attorney General shall ensure compliance with all applicable settlement terms.

394 (f)(1) No later than December 31 of each year, the Department of Behavioral Health
395 shall provide a report to the Mayor, Council, and Attorney General detailing the District's
396 use of monies in the Fund during the prior fiscal year.

397 (2) The annual report required by paragraph (1) of this subsection shall:

398 (A) Be published on the Office of Opioid Abatement's website; and

399 (B) Include, for the prior fiscal year:
400 (i) The opening and closing balance of the Fund;
401 (ii) An accounting and description of all credits to and
402 expenditures from the Fund;
403 (iii) An inventory of Fund investments, as of September 30
404 of the prior fiscal year;
405 (iv) The net income the Fund earned;
406 (v) A listing of all applications received for awards and
407 grants of monies from the Fund;
408 (vi) The name and a description of each awardee or grantee
409 of monies from the Fund, and the amount disbursed to each awardee or grantee;
410 (vii) A description of the intended use of each award or grant
411 from the Fund, including the activity, practice, program, service, support, or strategy
412 funded, population served, and measures that the awardee or grantee will use to assess the
413 impact of the award;
414 (viii) The primary criteria used to select each awardee or
415 grantee and its respective award or grant amount;
416 (ix) A statement as to whether monies disbursed from the
417 Fund supplemented and did not supplant or replace any existing or future local, state, or
418 federal government funding; and
419 (x) The progress toward achieving the Commission, Office,
420 and Fund's purposes, such as metrics on improving outcomes and reducing mortality and
421 other harms related to opioid use disorder and co-occurring substance use and mental health
422 disorders.
423 (g) The Office of the District of Columbia Auditor shall audit the Fund every 5
424 years.

ATTACHMENT I

7 A BILL
8

9 24-0952
10

11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
13
14
15
16

17 To establish an Opioid Abatement Advisory Commission to make recommendations to the Mayor
18 and Council regarding the use of opioid litigation settlement proceeds and District-wide
19 goals, objectives, and performance indicators relating to opioid use disorder and co-
20 occurring substance use and mental health disorders, and to establish an Office of Opioid
21 Abatement and set forth its powers and duties; to amend the Attorney General for the
22 District of Columbia Clarification and Elected Term Amendment Act of 2010 to make
23 conforming changes; and to amend the Opioid Abatement Fund Establishment Act of 2022
24 to clarify the monies to be deposited into the Opioid Abatement Fund, to provide for how
25 monies in the Opioid Abatement Fund shall be spent, to require an annual report to the
26 Mayor, Council, and Attorney General concerning opioid abatement activities and the use
27 of monies deposited into the Opioid Abatement Fund, and to require an audit of the Opioid
28 Abatement Fund.
29

30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
31 act may be cited as the “Opioid Litigation Proceeds Amendment Act of 2022”.

32 Sec. 2. Definitions.

33 For the purposes of this act, the term:

34 (1) “Commission” means the Opioid Abatement Advisory Commission established
35 by section 3.

36 (2) “Evidence-based” means that an activity, practice, program, service, support, or
37 strategy has undergone multiple randomized controlled trials and observational studies
38 demonstrating that it helps individuals avoid the development and progression of opioid and other

substance use disorders or drug-related harms, reduces the adverse consequences of opioid and other substance use, or manages, slows the progression of, or supports recovery from an opioid use disorder or co-occurring substance use or mental health disorder.

(3) “Evidence-informed” means an activity, practice, program, service, support, or strategy that incorporates the best available evidence, patient needs, values, and preferences, and practitioner expertise into the decision-making process.

(4) “Fund” means the Opioid Abatement Fund established by section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441).

(5) “Harm reduction” means an activity, practice, program, service, support, or strategy that addresses both conditions that precede and occur as a result of substance use and attempts to reduce the adverse consequences of opioid and other substance use among persons who continue to use those substances.

(6) “Infrastructure” means the resources, such as personnel, buildings, or equipment, required for the District or another entity to provide evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies to individuals with opioid use disorder and co-occurring substance use and mental health disorders.

(7) “Office” means the Office of Opioid Abatement established by section 4.

(8) “Prevention” means primary, secondary, and tertiary efforts to help individuals avoid the development and progression of opioid use disorder and co-occurring substance use and mental health disorders and drug-related harms.

(9) “Recovery” means a process through which an individual develops a healthier life, which may include:

(A) Improving the individual’s quality of life, including the individual’s physical and mental health;

(B) The individual’s consistent pursuit of abstinence from the substances or behaviors that have negatively impacted them, their family, and their community;

(C) Relief of the individual’s symptoms, including substance craving; and

(D) Improvement of the individual’s relationships, social connectedness, and interpersonal skills.

(10) “Treatment”:

(A) Means an evidence-based or evidence-informed activity, practice, program, service, support, or strategy to intervene upon, care for, manage, slow the progression of, or support recovery from opioid use disorder or co-occurring substance use or mental health disorders;

(B) Shall be individualized to address each individual’s medical needs; and

(C) Shall include screening for and diagnosis of substance use disorders or co-occurring mental or physical health disorders, as well as pharmacological and non-pharmacological therapeutic interventions for opioid use disorder or co-occurring substance use or mental health disorders.

Sec. 3. Opioid Abatement Advisory Commission.

(a) There is established an Opioid Abatement Advisory Commission.

(b) The purpose of the Commission shall be to:

(1) Ensure that the monies the District receives and deposits into the Fund are appropriately expended on evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

(2) Prioritize and facilitate public involvement, accountability, and transparency in allocating and accounting for these monies; and

(3) Ensure that the monies the District receives and deposits into the Fund have the effect of preventing, treating, and reducing opioid use disorder and co-occurring substance use and mental health disorders and reducing fatalities.

(c) The Commission shall be composed of 21 members, as follows:

(1) The Director of the Department of Behavioral Health, or the Director's designee;

(2) The Director of the Department of Health, or the Director's designee;

(3) The Director of the Department of Health Care Finance, or the Director's designee;

(4) The Deputy Mayor for Health and Human Services, or the Deputy Mayor's designee;

(5) The Deputy Mayor for Public Safety and Justice, or the Deputy Mayor's designee;

(6) The Chief Medical Examiner, or the Chief Medical Examiner's designee;

(7) The Attorney General, or the Attorney General's designee;

(8) The Chairperson of the Council committee with jurisdiction over health matters, or the Chairperson's designee;

107 (9) Five members appointed by the Mayor, with the following qualifications:

108 (A) One member with experience in providing prevention, recovery,

109 treatment, or harm reduction services for opioid use disorder and co-occurring substance use and

110 mental health disorders;

111 (B) Two members, respectively, with professional expertise and educational

112 backgrounds in:

113 (i) Medicine; and

114 (ii) Mental health services;

115 (C) One member who has experienced opioid use disorder and co-occurring

116 substance use and mental health disorders and recovery; and

117 (D) One family member of a person or decedent who experienced opioid

118 use disorder and co-occurring substance use and mental health disorders;

119 (10) One representative each from the:

120 (A) D.C. Behavioral Health Association;

121 (B) Medical Society of D.C.;

122 (C) D.C. Primary Care Association; and

123 (D) D.C. Hospital Association; and

124 (11) Four members appointed by the Chairman of the Council, with the following

125 qualifications:

126 (A) Two members with current experience as direct service providers of

127 prevention, recovery, treatment, or harm reduction services for opioid use disorder and co-

128 occurring substance use and mental health disorders;

129 (B) One member with professional expertise and an educational background
130 in public health policy or research; and

131 (C) One member who has experienced opioid use disorder and co-occurring
132 substance use and mental health disorders and recovery.

133 (d) The Commission shall elect a Chair from among its members.

134 (e)(1) Each member appointed pursuant to subsection (c)(9) and (11) of this section shall
135 serve a 3-year term; except, that:

136 (A) Of the Mayor's initial appointments, 2 members shall be appointed for
137 terms of one year, and 2 members shall be appointed for terms of 2 years; and

138 (B) Of the Council's initial appointments, one member shall be appointed
139 for a term of one year, and 2 members shall be appointed for terms of 2 years.

140 (2) Members shall serve:

141 (A) Following the expiration of their terms until their successors have been
142 appointed;

143 (B) For a maximum of 2 full terms, with partial term service not counted
144 toward this maximum; and

145 (C) Without compensation; provided, that they shall be reimbursed for
146 necessary expenses incurred in carrying out Commission duties.

147 (3) Vacancies shall be filled in the same manner as the original appointment for the
148 remainder of the term.

149 (f) The Commission shall hold public meetings at least quarterly, with meetings called by
150 the Chair or a majority of Commission members. All Commission meetings shall be subject to the

Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*).

(g) A majority of the Commission's members shall constitute a quorum, and actions of the Commission shall be taken by an affirmative vote of a majority of the members in attendance at a meeting where a quorum is present. Members may attend in person or remotely through audio or audiovisual means.

(h) The Commission shall have the following powers and duties:

(1) Establish procedures for the Commission's operations; and

(2) Make recommendations to the Mayor and Council regarding:

(A) District-wide goals, objectives, and performance indicators relating to:

(i) Prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

(ii) Reducing disparities in access to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies; and

(iii) Improving outcomes and reducing mortality in traditionally underserved populations, including for communities of color and current or formerly incarcerated individuals, with regard to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies;

(B) Governing principles, policies, and procedures for the application for and awarding of monies and grants from the Fund;

(C) Awards of monies and grants from the Fund;

174 (D) The performance and outcomes of Fund awardees and grantees;
175 (E) Management of the Fund; and
176 (F) Any changes to the Fund's purposes.

177 (i) The Commission's recommendations for the awarding of monies and grants pursuant to
178 subsection (h)(2)(C) of this section shall include the consideration of the following:

179 (1) The number of individuals, per capita, with an opioid use disorder, and the
180 number of overdose deaths per capita, in the area which a prospective awardee or grantee seeks to
181 serve;

182 (2) Disparities in access to care and health outcomes in the area which a prospective
183 awardee or grantee seeks to serve; and

184 (3) The infrastructure, activities, practices, programs, services, supports, and
185 strategies currently available to individuals with an opioid use disorder in an area which a
186 prospective awardee or grantee seeks to serve.

187 Sec. 4. Office of Opioid Abatement.

188 (a)(1) There is established, within the Department of Behavioral Health, an Office of
189 Opioid Abatement.

190 (2) The Office shall be led by a Director with at least 10 years' professional.
191 experience and education in prevention, recovery, treatment, and harm reduction efforts for opioid
192 use disorder and co-occurring substance use and mental health disorders.

193 (b) The Office shall have the following powers and duties:

194 (1) Conducting a District-wide needs assessment to identify structural gaps and
195 needs related to opioid use disorder and co-occurring substance use and mental health disorders;

(2) Supporting the Commission’s activities by providing staffing, research and policy expertise, facilities, technical assistance, and other resources;

(3) Assisting the Commission in preparing its recommendations regarding goals, objectives, and performance indicators pursuant to section 3(h)(2)(A);

(4) Integrating the work of the Office and Commission and Fund expenditures with existing District strategic planning related to opioid use disorder and co-occurring substance use and mental health disorders;

(5) Developing governing principles, policies, and procedures for the application and awarding of monies and grants from the Fund;

(6) Overseeing expenditures from the Fund, including by preparing a quarterly accounting of expenditures from the Fund and the Fund balance;

(7) Issuing, managing, and overseeing awards and grants from the Fund, including collecting and publicly reporting data from awardees and grantees concerning the effectiveness of infrastructure, activities, practices, programs, services, supports, and strategies funded; and

(8) Preparing the annual report required by section 5012(f) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(f)); and

(9) Creating and maintaining a public website that includes:

(A) Commission meeting attendance, agendas, and minutes;

(B) The governing principles, policies, and procedures developed pursuant to paragraph (5) of this subsection;

(C) The quarterly accountings of Fund expenditures and Fund balance prepared pursuant to paragraph (6) of this subsection;

219 (D) A listing of awards and grants from the Fund and awardee and grantee
220 data collected pursuant to paragraph (7) of this subsection; and

221 (E) The annual reports prepared pursuant to section 5012(f) of the Opioid
222 Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167;
223 D.C. Official Code § 1-325.441(f)).

224 (c) If the Office decides not to follow a Commission recommendation in whole or in part,
225 the Office shall provide the Commission with a written explanation for its decision within 14 days
226 after the decision is made. The Commission shall have at least 7 days after receipt of the Office’s
227 written explanation to provide a written response before the Office proceeds with its decision.

228 Sec. 5. Rules.

229 The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,
230 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), may issue rules to
231 implement the provisions of this act.

232 Sec. 6. Section 106b of the Attorney General for the District of Columbia Clarification and
233 Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official
234 Code § 1-301.86b), is amended as follows:

235 (a) Subsection (b) is amended as follows:

236 (1) Paragraph (2) is amended by striking the phrase “; and” and inserting a
237 semicolon in its place.

238 (2) Paragraph (3) is amended by striking the period and inserting the phrase “; and”
239 in its place.

240 (3) A new paragraph (4) is added to read as follows:

241 “(4) Subject to the limitations of subsection (d)(3)(D) of this section, funds received
242 pursuant to section 5012(b)(1) and (1A) of the Opioid Abatement Fund Establishment Act of 2022,
243 effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(b)(1), (1A)).”.

244 (b) Subsection (d)(3)(D) is amended to read as follows:

245 “(D) The Attorney General shall transfer to the Opioid Abatement Fund,
246 established by section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective
247 September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), at least 85% of any
248 payment received prior to October 1, 2022, in settlement of the cases and settlements, judgments,
249 and consent decrees specified in section 5012(b)(1) and (1A) of the Opioid Abatement Fund
250 Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code
251 § 1-325.441(b)(1), (1A)), that was deposited into the Fund, and at least 90% of any payment
252 received thereafter. The Attorney General may elect to retain the remainder of each such payment
253 in the Fund by providing the Mayor, Chief Financial Officer, and Council with written notice of
254 the amount of the election and the relevant payment. In making this election, the Attorney General
255 shall ensure compliance with all applicable settlement terms.”.

256 Sec. 7. Section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective
257 September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), is amended as follows:

258 (a) Subsection (a) is amended by striking the phrase “the Mayor” and inserting the phrase
259 “the Department of Behavioral Health” in its place.

260 (b) Subsection (b) is amended as follows:

261 (1) Paragraph (1) is amended as follows:

(A) The lead-in language is amended by striking the phrase “time, in settlement of D.C. Superior Court cases” and inserting the phrase “time, pursuant to the settlement and trust-distribution agreements entered in the following cases” in its place.

(B) Subparagraph (A) is amended by striking the phrase “Case No. 2022-CA-001441-B” and inserting the phrase “Case No. 2022-CA-001441-B (D.C. Super. Ct.)” in its place.

(C) Subparagraph (B) is amended to read as follows:

“(B) *District of Columbia v. McKesson Corp., et al.*, Case No. 2022-CA-001401-B (D.C. Super. Ct.);”.

(D) Subparagraph (C) is amended by striking the phrase “Case No. 2021-CA-00327-B; and” and inserting the phrase “Case No. 2021-CA-00327-B (D.C. Super. Ct.); and” in its place.

(E) A new subparagraph (D) is added to read as follows:

“(D) *In re Mallinckrodt PLC*, No. 20-BK-12522 (Bankr. D. Del.);”

(2) A new paragraph (1A) is added to read as follows:

“(1A) Funds received by the District pursuant to any pre- or post-suit settlement, judgment, or consent decree that the Attorney General designates as an opioid-related settlement, judgment, or consent decree; provided, that the Attorney General shall notify the Mayor and Council of any such designation within 30 days after the settlement, judgment, or consent decree becoming final; and”.

(c) New subsections (b-1), (b-2), (b-3), and (b-4) are added to read as follows:

“(b-1) Monies in the Fund shall only be used for the following purposes:

284 “(1) Permissible Commission and Office activities and operations, including
285 personnel, pursuant to sections 3 and 4, respectively;

286 “(2) District-wide needs assessments to identify structural gaps and needs related
287 to opioid use disorder and co-occurring substance use and mental health disorders;

288 “(3) Awards and grants for evidence-based and evidence-informed prevention,
289 recovery, treatment, or harm reduction activities, practices, programs, services, supports, and
290 strategies for opioid use disorder and co-occurring substance use and mental health disorders,
291 including evidence-informed pilot programs or demonstration studies;

292 “(4) Infrastructure required for evidence-based and evidence-informed prevention,
293 recovery, treatment, or harm reduction activities, practices, programs, services, supports, and
294 strategies for opioid use disorder and co-occurring substance use and mental health disorders;

295 “(5) Evaluations of effectiveness and outcomes for activities, practices, programs,
296 services, supports, and strategies for opioid use disorder and co-occurring substance use and
297 mental health disorders for which monies from the Fund were disbursed, such as impact on access
298 to harm reduction, services, or treatment for disorders, or reduction in drug-related mortality;

299 “(6) Publicly available data interfaces, including to aggregate, track, and report:

300 “(A) Data on opioid use disorder and co-occurring substance use and mental
301 health disorders, overdoses, and drug-related harms; and

302 “(B) Outcomes of activities, practices, programs, services, supports, and
303 strategies for which monies from the Fund were disbursed;

304 “(7) The audit required by subsection (g) of this section; and

305 “(8) Any other opioid abatement activities authorized by any settlement, judgment,
306 or consent decree resulting in funds being deposited into the Fund.

“(b-2) Unless otherwise required by court order, monies in the Fund shall be used for prospective purposes and not to reimburse expenditures incurred prior to the effective date of the Opioid Litigation Proceeds Amendment Act of 2022, as approved by the Committee on the Judiciary and Public Safety on November 22, 2022 (Committee print of Bill 24-952).

“(b-3) Monies expended from the Fund for the purposes set forth in subsection (b-1) of this section shall supplement, and not supplant, any other funds, including insurance benefits or District or federal funding, that would otherwise have been expended for such purposes.

“(b-4) Expenditures for Commission and Office activities and operations, including personnel, and expenditures for audits shall comply with any applicable terms in the settlement agreements, judgments, or consent decrees that limit the use of funds for administrative expenses.”.

(d) Subsection (c) is amended by striking the phrase “the Council of the District of Columbia” and inserting the phrase “the Council” in its place.

(e) New subsections (e), (f), and (g) are added to read as follows:

“(e)(1) Notwithstanding subsection (b)(1) and (1A) of this section, the Attorney General may elect to have no more than 15% of any payment the District receives prior to October 1, 2022, pursuant to the settlements, judgments, and consent decrees referenced in subsection (b)(1) and (1A) of this section, retained in the Litigation Support Fund established pursuant to section 106b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b), and no more than 10% of any payment received thereafter.

“(2) The Attorney General shall make an election pursuant to paragraph (1) of this subsection by providing the Mayor, Chief Financial Officer, and Council with written notice of

the amount of the election and the relevant payment. In making this election, the Attorney General shall ensure compliance with all applicable settlement terms.

“(f)(1) No later than December 31 of each year, the Department of Behavioral Health shall provide a report to the Mayor, Council, and Attorney General detailing the District’s use of monies in the Fund during the prior fiscal year.

“(2) The annual report required by paragraph (1) of this subsection shall:

“(A) Be published on the Office of Opioid Abatement’s website; and

“(B) Include, for the prior fiscal year:

“(i) The opening and closing balance of the Fund;

“(ii) An accounting and description of all credits to and expenditures from the Fund;

“(iii) An inventory of Fund investments, as of September 30 of the prior fiscal year;

“(iv) The net income the Fund earned;

“(v) A listing of all applications received for awards and grants of monies from the Fund;

“(vi) The name and a description of each awardee or grantee of monies from the Fund, and the amount disbursed to each awardee or grantee;

“(vii) A description of the intended use of each award or grant from the Fund, including the activity, practice, program, service, support, or strategy funded, population served, and measures that the awardee or grantee will use to assess the impact of the award;

“(viii) The primary criteria used to select each awardee or grantee and its respective award or grant amount;

352 “(ix) A statement as to whether monies disbursed from the Fund
353 supplemented and did not supplant or replace any existing or future local, state, or federal
354 government funding; and

355 “(x) The progress toward achieving the Commission, Office, and
356 Fund’s purposes, such as metrics on improving outcomes and reducing mortality and other harms
357 related to opioid use disorder and co-occurring substance use and mental health disorders.

358 “(g) The Office of the District of Columbia Auditor shall audit the Fund every 5 years.”.

359 Sec. 8. Applicability

360 (a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget
361 and financial plan.

362 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in
363 an approved budget and financial plan, and provide notice to the Budget Director of the Council
364 of the certification.

365 (c)(1) The Budget Director shall cause the notice of the certification to be published in the
366 District of Columbia Register.

367 (2) The date of publication of the notice of the certification shall not affect the
368 applicability of this act.

369 Sec. 9. Fiscal impact statement.

370 The Council adopts the fiscal impact statement in the committee report as the fiscal impact
371 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
372 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

373 Sec. 10. Effective date.

374 This act shall take effect following approval by the Mayor (or in the event of veto by the
375 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
376 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
377 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
378 Columbia Register.